

**SOCIALIST CONCEPT
OF HUMAN RIGHTS**

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GENERAL PROBLEMS OF RIGHTS

Ever since the great century of Renaissance civilized mankind has been seeking the answer in always renewed forms to a more propitious settlement of the relationship between the individual and the community. The differentiation made in the age of Reformation between "private individual" and "public man", the declaration by the French Revolution of the "rights of man and citizen" and recently the stress laid upon the free unfolding of *personality* — all reflect the same effort while posing the question in different ways, as determined by the material conditions of the given epoch and given society.

The ideas on rights and liberties expressed in the Communist Manifesto occupy an honourable position on the ascending spiral of this centuries-old evolution which was laden with contradictions. The Manifesto was the first to point out and prove with the force of scientific truth that under the conditions of developed capitalism it was not the abstract dualism of "man and citizen" concealing the class struggle waged between the exploited and the exploiter, but the antagonism between bourgeois and proletarians — an antagonism calling for a revolutionary solution or by-passing — which marked out the way of progress. This fact served the ideological foundations for the Paris Commune, and its workers' government to summarize, even if in a somewhat Utopian manner and with an optimism not warranted by the prevailing circumstances, the liberties and rights of "*man, citizen and working individual*".

The first spelling out of the rights of working people means a turning point in the history of human rights. Since the middle of the 19th century the catalogue of the citizen's basic rights, the form of expressing these in constitutions and the effective safeguards have been determined by the balance of the class struggle between the proletarian and bourgeois classes. It was the result of this fight that the socialist state emerged, handing over to the collective ownership of the working masses those material and cultural properties which are indispensable to efficiently safeguard these rights. It meant also that the classical human rights known up to that date were endowed with a new meaning. Formerly even the most democratic capitalist state had remained content with the formal protection of rights as laid down in statutes, and with redressing their infringements. However, as soon as the means of production, and the cultural, social and public health institutions have passed into public ownership, it became a duty incumbent upon the *community, society and the state* as their representative to regulate and organize the constant building up of the material wealth and its general distribution which is necessary to make these rights a living reality. Simultaneously, new types of

economic, social and cultural rights were evolving, and only the socialist state which controls the productive process was capable of undertaking a *legally sanctioned* obligation to the organized satisfaction and actual enforcement of these new rights. But the socialist state also proved the opportunity, after eliminating the exploiting classes, through the liquidation of class antagonism, followed by the gradual disappearance of social classes, of evolving a harmonious unity among the interests of society, state, and individual. This is the kind of harmony which helps expand the scope of the development of personality and to freely unfold individual abilities.

Four centuries of social evolution lie between the private individual as mentioned in Calvin's *Institutiones* and the pretensions of modern personality. The "private man" is perhaps not *the* first attempt but in any case the first discernible effort to express in an abstract form, with a theoretical objective, the demands of citizens to a field of action which is independent of the system of feudal public authorities and state intervention. At the outset they were aimed not so much at economic matters as to affairs of religion, of world-outlook. It goes without saying that also in this context economic interests were hidden under the ideological cover. The fight of the bourgeoisie for an unrestricted economic liberty and later for political power was launched on an ideological plane. The "private man" — as yet — was not fighting for political power, at least not directly. He would have been content for the moment to accommodate himself to those in power. What he wanted was to be left alone in religious — and that meant at the time in ideological — matters, undisturbed by the feudal government machinery, in order to dig in his heel at this firm point and, like a new Archimedes, unhinge the entire system of feudal society. This private man organized various communities, associations first with a religious later with an explicit political tinge, to subsequently discard the feudal "commoner" and conquer political power as a "bourgeois".

The pattern of the new government machinery was built on a fiction best suited to the demands of the bourgeois: the concept of *contract* which precisely reflects the everyday economic activity of the bourgeois. The theory of social contract has survived up to our days. It is professed in many instances through intricate media and is difficult to identify. Still, it is invariably present and discernible not only behind the ideological tenets used to justify the government machinery of the bourgeois state but also behind the theoretical conclusions explaining rights and duties and the relation between the individual and society.

Nobody would insist that the contract theory was the product of the bourgeois revolutions; but it is no mere accident either that this theory was preferred to many others available by the bourgeoisie. This preference was presumably enhanced by the fact that the "private man" represented an individual conceived as an independent being, detached from the government machinery, fully within his rights, a contracting party possessing the entirety of rights under the law of nature. As a consequence of the contract theory its variants rendered, within a relatively short period of history, the private man a subject of claims and obligations of many fictitious contractual formulae. He first enters into contract with God.

Then he will form various bodies with a view to enter into contract with the ruler, the king who was considered on the ground of divine rights to be a contracting party equal to the community of private men, in order to lay down the precise conditions of governance. This is what was called the theory of "dual contract" which, admitting it or not, retained the idea of the divine origin of state power. However, the private man was to get rid, sooner or later, also of this compromise to become a Janus-faced creature in the doctrine of Rousseau who, by entering into contracts with being like himself, brings about *public power* in a single contract constituting thereby himself a lord and subject; a sovereign and at the same time a governed people. Thus the private man recognized hitherto by public power only as a subject vanishes, only to reappear as the sole owner and possessor of political power. From this moment all the rights of the former private man connected with the exercise of power (political rights), and his rights of ownership (private property, unrestricted disposal over property, the sanctity of property) claim to be safeguarded and protected by the entire legal order and state organization. This new duality marks the emergence of the pre-revolution private man in a double capacity. The citizen as the possessor of political power, the self-conscious *citoyen* and the economically active citizen as he is shown in the first basic paper of this volume from various angles. It is necessary to probe deeper into this double aspect before one can understand the revolutionary significance of the rights of "man and citizen" as laid down in the declaration of the French Revolution.

This concept, as reflected in the titles, if not quite consciously but in any case in a clear-cut form approves, on the ground of the capitalist production relations, the sharp distinction between political and economic power and the organic division between the two. Differentiation between the public power of the state and economic power or perhaps even more: its sanctioning by the state was an act of historical significance. At this phase of social evolution it contributed to the unfolding of individual initiative and the development of productive forces. This economic foundation of contrasting man and citizen — revealed first by the young Marx — left of course its impact upon other spheres of social relationships too. It secured the autonomy of personality, the independent scope of action and the perspective of its development also in such respects which were only indirectly related to, or through several transmissions connected with, economic activity. In this sense it had an important function in enhancing the unfolding of *individual personality* and in laying the foundations for a number of individual rights and liberties generally recognized also in our days.

Nevertheless, this dual aspect involved some other consequences as well. The adoption of this duality by the legislation namely provided an ideological basis for the working men — right on the morrow of bourgeois revolutions — to regard as a battle-ground all the rights and liberties, without exception and simultaneously, of the economic man and politically conscious citizen. The fight was simultaneously launched for making the means of production general, common property, for abolishing the class character of ownership, for transforming political

rights into all-embracing, veritable "human" rights, for doing away with the actual restrictions by means of which the bourgeois class, from the moment of its gaining power, had excluded from the exercise of the abstractly conceived political rights and thereby from the exercise and possession of political power the overwhelming majority of society. These demands were summed up at the outset in the endeavour to reach a real social, economic and political equality. This idea of equality did not reflect the particular rights of working men but involved the requirement of a *declaration of the economic, social and cultural rights*, similar to that on political rights and of their effective safeguards. It is obvious that the demands of equality as were raised in the wake of bourgeois revolutions contained many Utopian dreams of the petty bourgeois, but it is also clear that these demands reflected after the French revolution the explicit interests of working men. As early as 1793, when the Robespierre declaration was made, the inclusion of the right to work and education in it must be deemed as a gesture towards the working men. The manifesto issued by the Babeuf conspiracy "The Manifesto of Equals" (1796) expressed the most important demands of the workers' groups for the right to equal educational opportunities and for the general and equal obligation to work (the logical counterpart of which is the safeguarding of the right to work for every individual). These ideas of equality were gradually transforming into demands which eventually discarded the insistence on the classical rights of man and citizen and put in the forefront the class demands of workers. This is not to say that the working class either refused to accept, or rejected the ideas on traditional rights of the French declaration; it meant rather that the working class was gradually becoming class-conscious, was emerging as a distinct revolutionary force and was reaching the level of evolution when it could demand the leadership of the struggle waged by the whole population for the "economic emancipation of labour", for the elimination of exploitation. Accordingly, proletarians substituted their own, distinct rights as the comprehensive rights of working men for the ideas of right and liberty of the bourgeois class. From this moment on the struggle waged for enforcing the rights of working people are no longer restricted to the recognition of economic, social and cultural rights, i.e. a new category of rights, but involved the comprehension that these rights could be translated in reality only within the framework of a new social system. In fact there arises the outline of a new type of state which is to serve the interests of the formerly oppressed and exploited majority in all spheres of all the rights, whether political, economic, cultural or social.

At that stage of evolution the working-class movement measures, of necessity, all social values, and thus the value of fundamental freedoms and liberties against the standard of the momentous antagonism between the *bourgeois and proletarian class*. The more so because by the middle of the last century the bloom of the natural law was in any case fading away from these rights, and it became obvious that the extent of their actual implementation for the working population corresponded to the success of the day-to-day fight waged for enforcing these. Thus, it became necessary to destroy in the masses of workers the unsophisticated belief

in the social values created by the great century of Enlightenment but betrayed by the bourgeoisie after it had come to power. The entire working-class had to be taught that there could be no social values which could force working men to cooperate with the exploiting classes and to give up their struggle against exploitation. It fell to the Communist Manifesto to substantiate that "the bourgeoisie dissolved personal dignity into an exchange value and replaced the numerous liberties laid down in charters and won with difficulties with the *sole* unscrupulous liberty of trading". The working-class in capitalist states should consider all laws, morals, religion as mere bourgeois prejudices; serving to disguise bourgeois interests. The rights expressed by these tenets protected (together with the laws and the entire legal system) the interests of the capitalist class. Illusions purporting that these afforded an overall institutions protection to individual personality and security must be given up. The Manifesto arms the workers, the vanguard of the revolution, to oppose all previous "private security and private safeguards" protected by the capitalist state. The destruction of these illusions constituted the prerequisite of taking over into public ownership the means of production. When these illusions were destroyed, merely the "bourgeois individuality", the "bourgeois self-assertion", and "bourgeois liberty" would be eliminated for "liberty means in the bourgeois order of production free trading, the unhindered sale of goods, "the freedom to exploit, a freedom which will have disappeared when profiteering will be stopped." "The phrases about free profiteering, as well as the other bourgeois slogans about liberty, make sense only in respect of the restricted profiteering, the medieval bourgeois plunged into servitude but are void of any sense in respect of the elimination by the communist of profiteering, of the bourgeois production relations and of the bourgeoisie itself." "The ideas of the freedom of conscience and religion were but the expressions of the domination of free competition relating to conscience." "Whom you consider as an individual is nothing but the bourgeois man of property." This judgement calls for the "veritable abolition of individuality" but it does not object to the freedom of individuals "whose property cannot be anymore the means of exploitation". In any case the Manifesto rejects all such ideas which would measure the elimination of bourgeois ownership against "the bourgeois concepts of liberty, law, culture, etc." — which are the products of the capitalist production relations.

Thus it was *not the fundamental rights and liberties* which were attacked in the Communist Manifesto but their *bourgeois construction and practice*. More than one and a half decade later the same idea is proclaimed in the declaration announcing the formation of the 1st International. It is laid down in that declaration that the struggle for the emancipation of the working-class is directed not at obtaining class privileges but at abolishing all kinds of class rule, at accomplishing the equality of rights and duties. But the emancipation of the working-class could be carried only by the working-class itself and this *principal* objective must dominate all other considerations. The working-class, at the first opportunity when it came to power even if for a brief period, proved that its efforts were aimed not at abolishing rights but to expand these for all. The proclamation of April 20, 1871 which may be

considered as the program of the Paris Commune addressed to the people of France holds out the prospect of the entirety of rights for all French citizens to enable them — as “*men and citizens and as working individuals*” — to unfold all their abilities and natural bents in all walks of human activity”. In this way the Paris Commune came near not only to the modern requirements of personality but also pledged itself for a wider and richer list of fundamental rights. This should be said even if it is clear that the old terms used to denote these rights were already covering a changed substance; the image of a society is appearing where all persons are “working-men” because working is a general obligation and, in turn, all working persons are also “citizens”, i.e. they share in and exercise political power. Thus in such a social system the economic, social and cultural rights appear as if pertaining to the working men only, but — just as the political rights — in fact they are secured for all citizens.

Less than half a century elapsed between the Paris Commune and the “Declaration on the Rights of the Working and Exploited People” and the first Soviet constitution — the first socialist summary of the citizens’ rights. It is perhaps of a symbolical significance that both the French declaration and the socialist declaration on the rights of the working and exploited people were first debated in bourgeois national assemblies whose main objective was to bar the way of royal absolutism. But while the French National Assembly in 1789 represented social progress, and contributed to the formation of a new epoch by adopting the declaration on the rights of man and citizen, the *Constituent Assembly* created by the Russian bourgeois revolution, being an obsolete institution of a belated bourgeois revolution justified its own doom by the very fact that it refused to adopt the declaration on the rights of the working and exploited people. This rejection also shows that much more was involved in this declaration than a mere extension of the rights of individuals or citizens.

When either the declaration on the rights of the working and exploited people or the general part of the first, 1918 Soviet constitution laying down these rights are considered, we are faced with such instruments whose main function was to express the basic principles of a new social system, the achievements attained in the course of the revolutionary struggle fought for a new social system. But obviously it was not their purpose to lay down human rights with a legal precision. Besides, these instruments set out, explicitly and deliberately, to lay down the rights of working individuals and the exclusion of the exploiting class from the enjoyment of these rights and this fact determines also the character of the single rights. The rules connected e.g. with the freedom of the press provide for the emancipation of printing equipment and making these available for the *working people* mark the results attained. The freedom of organization and association is conferred upon industrial workers and poor peasants whom the necessary financial and other means are put at their disposal for this end — after the political and economic power of the exploiting classes have been done away with. A similar concept appears also in the freedom of assembly. It would equally be difficult to identify the right to education as it is conceived today with the promise of the government

of securing funds for the education of workers and poor peasants and of raising the educational level of working men. Likewise, the provisions on the right to work as it is understood today would have been meaningless under the then prevailing conditions when the main problem was how to enforce the general obligation of labour and how to use it to re-educate the former exploiting classes. General political rights, extending to all citizens are not found in these instruments either. It is the primary function of the constitution to exclude the exploiting class from the exercise of power. On the other hand, under the constitution state power was built on the Soviets, the mass organizations of the working people, defining thereby the frames of the structure and functioning of a government system which held out the perspective that literally all citizens of the state would be drawn into government activity. Also the citizens' duties acquired a different meaning. Instead of laying down conscription, e.g. the constitution simply proclaims the fact of arming the working people and disarming the exploiting classes. (There are of course several provisions in the constitution which recall, in their form, the traditional wording of rights and liberties as e.g. the equality between nationalities and races, the right of asylum, etc. But the substance of these rights was equally inseparable from the tasks the revolution was then facing.)

A great number of other tenets could be adduced to show that the first constitutional legislation in the emerging Soviet socialist state was not aimed at declaring, with a general force, the rights of man and citizen but laid down the rights of the *workers*. From this fact, which was always unequivocally pointed out and acknowledged by the Soviet government, was construed an accusation to the effect that the young Soviet state had rejected democracy and the fundamental rights of its citizens. But the first enactments of the Soviet state only reflected the state of affairs as they actually were: while exploiting classes were still existing and while the danger of their armed rebellion was actually threatening, and while these classes retained their influence in society and while individuals belonging to these classes were actually "not working people" — they had to be excluded from the enjoyment of the rights conferred upon the working people. This is however something quite different than a general rejection of the concept of fundamental human rights. This is borne out by the contemporary documents of the international working class movement, too. It is well-known that these constitutional provisions and legal views then adopted in the Soviet state truly reflected, in the given epoch, the views professed by the international revolutionary working class movement. The issue was discussed at the 1st Congress of the International (March 3—7, 1919) — at a time when international armed intervention and internal armed counter-revolution were at their height — and in the main the Congress adopted a positive stand in respect of the democratic rights and liberties when it laid down that "it is an inevitable consequence of the dictatorship of the proletariat that not only the general forms and institutions of democracy will have been changed; the changes to be effected will be aimed at securing a *real use of democracy for the capitalist-oppressed working classes*. And indeed, the form of the dictatorship of the proletariat which has already emerged in fact, e.g.

the power of Soviets in Russia, the Räte- (Council) system in Germany, the Shop Steward Committees and similar council-like institutions in other countries, mean and implement the actual opportunity of exercising democratic rights and liberties for the working classes, i.e. the overwhelming majority of the population which had never existed to a similar extent even in the best and most democratic states of bourgeois democracy”.

The proclamation addressed by the IIIrd International to the peoples of the world explicitly rejects the accusation as if a victorious proletariat were to wipe out freedom and democracy. It is pointed out in the proclamation that only bourgeois democracy and its methods will be destroyed simultaneously with the overthrowing of bourgeois governments. On the other hand it is also pointedly stressed that it would amount to a betrayal of the proletariat in its life-and-death struggle waged against the exploiting classes if it were compelled to observe the rules of game as these prevail in political democracies. “To demand from the proletariat to observe piously the principles of political democracy in its last life-and-death struggle against capital were similar to asking a man defending his life against a murderer to observe the artificial and conventional rules of French boxing, let alone those rules which were framed by his enemy but which he himself does not take seriously.”

The Vth All-Russian Congress of Soviets (July, 1918) which enacted the first Soviet constitution placed — for the first time — side by side the great French declaration, the Communist Manifesto and the first Soviet constitution stressing their historical significance. Indeed all three documents constituted milestones also in the history of human rights.

After the adoption of the first Soviet constitution the evolution of fundamental rights and duties has been advancing along two different lines. The Soviet state has started on the way which has led to extending the rights of the workers for all citizens, according to the laws of socialist society. With the accumulation of material and cultural wealth, this path leads to the emergence of new categories and new safeguards of rights on the economic, social and cultural plane. However, in the other part of the world the struggle between the proletariat and bourgeoisie has been sharpening to an unprecedented extent. On the one hand, as a result of the great international movement of the working class, economic and social rights have gradually found their way into bourgeois constitutions; on the other hand the repeated efforts of the most reactionary circles in imperialist states, bred by the general crisis of capitalism, to dispense with even the classical human rights — getting increasingly inconvenient — have become a permanent feature. When Fascist governments came to power, democratic rights, fundamental human rights and freedoms were wiped out, and all those ethical and cultural values which had been created in the last centuries by the evolution of human society were threatened with outright destruction.

This was the historical moment when the international working class movement was able to raise its voice on a world-wide scale for the protection of democratic rights and to offer an alliance to all social forces — irrespective of nationality, race, outlook and social status — which were willing to resist Fascist barbarism.

This historical moment made all people aware that in our days the catalogue of the fundamental human rights includes, also in capitalist countries, numerous achievements attained by the working class in its struggle. It is thus much more than just a tactical action in quest of allies, when the VIIth Congress of the International (1935) — though stressing the class-limitations of the bourgeois democratic rights — still takes an unequivocal stand for the same: "We believe in the Soviet democracy, in the democracy of the working people which is the most consistent democracy in the world. But we are and will be defending even the tiniest bourgeois democratic liberty in capitalist states which is threatened by Fascism and bourgeois reaction, because this is what the interests of the class struggle of the proletariat call for." This stand meant a certain change in the policy line of the IIIrd International, in which previously the emphasis was laid on exposing the class character of the bourgeois liberties.

In these years (the middle 'thirties), incidentally, *the attack against democratic rights* was not confined to the countries where Fascism had triumphed. It became then a veritable world phenomenon. It would be difficult to list those philosophical, sociological, political trends all of which provided ready-made ideologies depicting the democratic rights as obsolete, barring the way of evolution or as institutions retarding social achievements. It would be even more difficult to sum up those concrete political or legal measures which were aimed at restricting or eliminating these rights. The difficulties were also increased by the fact that the Soviet Union had at that time to cope with major internal economic and political problems. The socialist transformation of agriculture necessarily involved numerous economic troubles. As far as political life was concerned, the personality cult then emerging created an atmosphere favouring — to put it mildly — that the *indispensable rigour of statutes be further enhanced by inhuman actions*. In such a historical situation, when seemingly the whole world was all out against democratic rights and institutions, it was of a historical significance that the Soviet Union, adopting the constitution of 1936, put again the democratic rights and liberties extending to all citizens, in the foreground. (The domestic conditions for extending these rights to all citizens had become ripe by then in the Soviet Union after elimination of the exploiting classes.) Thus, the 1936 constitution of the Soviet Union provided a program of action for the fight waged for democratic rights at a time when the belief in democratic institutions had been shaken all over the world. This much should be stressed even if the limitations of the 1936 constitution are well known.

The idea of fundamental rights and liberties largely contributed to the Soviet Union and the Western democracies becoming talking partners in the middle 'thirties in assessing the repeated aggressive actions committed by the Fascist powers. Such was the international political atmosphere which eventually created the environment for the military alliance of the leading imperialist states and the Soviet Union (countries with so different social systems) which was to destroy with joint effort Fascism itself. Numerous other economic and foreign political interests contributed to the emergence of the world alliance against Fascism. However, it is undoubted that the millions of simple men and women, the peoples

and fighting soldiers standing behind the governments — ranging from the Russian Bolsheviks to the American Quakers — saw their common objective, their common moral basis, in the defence of human rights. This common objective accounts for the fact that the war could not be finished with the partial attainment of the war aims of one or the other power, and why it had to lead of necessity to the complete destruction of Fascism.

The momentous significance of the fundamental rights and liberties in the struggle against Fascism evolved finally into a universal effort towards elaborating a high-level and intricate set of guarantees which would prevent for all times to come the brutal annihilation of the universally recognized fundamental rights and freedoms.

The bitter experiences made it obvious that the means resorted to hitherto in positive law were inadequate for their protection. The elaboration of legal safeguards of a novel type, which would meet the requirements of countries with different levels of development, let alone with differing social systems, would clearly take a longer time. In this state of affairs the opportunity was offering itself to revive the tenets of *natural law* long surpassed formerly by positivist legal theories. Although these tenets have not added a single new institution to the enforcement of the actual safeguards of these rights, they still have the advantage of not being limited by the results of modern social sciences and appear to be capable of giving answers, in a speculative way, to all problems relating to the protection of fundamental rights. The principal danger of the new natural law trends lies in the very fact that these divert attention from the opportunities available in extending the safeguards in the field of positive law. It is clear that natural law schools will necessarily decline at the moment when an increasing number of realistic safeguards will have met the requirements of the increased protection of democratic rights. Nowadays, however, it appears to be appropriate that a paper in this volume should be devoted to assessing these trends.

In the legal concept of historical materialism it is almost a theoretical point of departure that the new means of safeguarding human rights can be defined only in the context of those social forces, and built upon those classes and strata of society which have an interest in the maintenance and constant improvement of these rights and liberties. It has been shown by experience that *the social basis of the protection of rights and liberties* is not only very extensive but it is expanding in keeping with the augmentation of the catalogue of these rights' and of their safeguards. Looking at the matter from another aspect: as to the safeguards themselves, a very significant, almost primary, function may be obtained by resorting to opportunities afforded by positive law. In any case the system of legal safeguards is displaying a distinct perfectioning both in municipal laws and in international law. And the perspective of the development of safeguards points unmistakably to the further differentiation and strengthening of legal safeguards.

As to international law, no one could state that the legal and structural patterns of the desirable solutions have already been found. It is also clear that in the past

two decades the *international legal safeguards* have been developing under very contradictory conditions. But this state of affairs notwithstanding, it would be an exaggeration to say that all efforts in this direction have proved useless. From the Atlantic Charter, in which was declared the requirement to introduce international safeguards to protect human rights, to the UN Charter and the Universal Declaration of Human Rights, and to the partial agreements adopted recently and securing certain rights (e. g. the right of equality), numerous international instruments bear witness that under the conditions of peaceful co-existence there are realistic opportunities to lay down international legal safeguards which are in conformity with the sovereignty of states. The increasing importance of international legal safeguards has made it almost a compelling necessity to devote a paper to the historical evolution and present state of these safeguards.

But however great the expansion and differentiation of the system of international legal safeguards may be, the primary role in enforcing these rights will always be allotted to safeguards laid down in the municipal laws of states. In the future, at least in a long-term perspective of development, it is the *effective municipal law measures* which will, on a mass scale, determine the practical enforcement of these rights. In any case, the effective implementation of these safeguards constitutes also a prerequisite of an international regulation. Thus it is clear that recent research has laid a particular stress on the many-sided, sociological, legal, economic, statistical, etc. examination of the process which leads from the idea of these rights (from the political views prevailing in a given type of society and relating to these rights) through the expression of these in the legal system (in statutory law, eventually in constitutional regulation, in legal institutions) to the practical enforcement of these rights. A paper is devoted in this volume to one of the most important aspects of the issue, namely those social factors which have a bearing on the trend of evolution of this process under the conditions of bourgeois society.

If the problem of legal safeguards is approached from the angle of social realities it may safely be said that the perspectives of development are almost unlimited in this field also in our days, the fact notwithstanding that development is invariably characterized by a sharp struggle. Subsequent pages will revert to analysing why the problem of the legal safeguards of the economic, social and cultural rights are not and, indeed, cannot be solved, in the main, under capitalist conditions. But there are much more loopholes in the system of the safeguards of, what are termed, classical liberties than can be endured in the political and ideological etiquette of bourgeois democracies. An impressive number of instances could be adduced to prove that in countries which are very proud of their democratic traditions and the stage of their development a very wide gap exists between the rights as proclaimed and their actual enforcement, if the position of the working classes is examined. It is perhaps unnecessary by now to go into arguing that the statutory regulation of legal safeguards and principally the process of their practical implementation is not dependent upon the benevolence or malevolence of

governments and not even upon the execution of scientifically prepared codification projects. Under the conditions of a capitalist society the forces which have an interest in curtailing or wiping out democratic rights will always be vigorous. This tenet is well illustrated recently by the long-lasting struggle about the adoption of legislation on civil rights in the US.

The *developing countries* which have become free from colonial oppression are now taking the initial steps in actually safeguarding fundamental rights. Those by no means insignificant changes in the stage of social development will undoubtedly be reflected in the legal safeguards just being laid down or to be laid down in the countries concerned. In a number of instances the introduction of really effective safeguards is hampered by the lack of legal traditions or legal erudition. The colonial rule must be blamed for that. But it is a problem of today that the basic international declarations and conventions on the fundamental rights do not always take into account the special characteristics of the developing countries. Thus there exists a double danger that these states when adopting and declaring requirements suited for the most developed countries, will only formally comply with the provisions as laid down in the UN-Charter. In the long run this fact is, to a certain extent, a hindrance in the way of evolution. Namely, due to this state of affairs, some of these countries are prevented from introducing, enacting and practically implementing institutions which would be in harmony with their actual social and economic development, conforming thereby to a minimum standard, acceptable on an international scale, which could be a realistic foundation for a continued evolution and for the practical implementation of institutions which — at present — can only be established in the most developed countries.

New problems have been involved after the second world war in respect of the evolution of the socialist concept of fundamental rights and liberties, through the appearance of *people's democratic states* as the new varieties of a socialist state. At first it was not clear in these countries, either in jurisprudence or judicial practice, whether the socialist regulation of the citizens' fundamental rights should start from the concept of the *general rights of citizens* or — as had been the case in the first stage of the Soviet development — the *rights of the working people*. However, subsequent upon the defeat of Fascism the main problem was to secure the achievements attained in bourgeois democracies, and the relatively peaceful way of popular democratic development led to the result that the rights were laid down so as to embrace all citizens. This fact is reflected in the relevant constitutional provisions, though it cannot be said that this trend was quite unequivocal. The concept to emphasize the rights of the working people was apparent in some instances on the level of constitutional regulation, and still more in the statutes giving effect to these rules — at least in the first stage of development. By now, when the foundations of socialist society have already been laid down in the people's democratic countries, exploitation has been put an end to, such a unity in society has emerged which provides a ground for the concept of extending, in their entirety, the fundamental human rights to all citizens. An opportunity is thus afforded to place in the foreground the common, general features of rights

and duties prevailing in the Soviet Union and in the people's democratic countries. When the common features are analysed it should not be left out of consideration that there are numerous variances in the legal systems of various socialist countries as regards these rights and their safeguards. These variances are closely coupled with the social conditions, historical traditions, legal heritage of the respective countries. The fact should not be left out of account that in some of the socialist countries the socialist revolution came in the wake of relatively more developed bourgeois democratic institutions or was faced with such demands, which had an impact, to a certain extent, on the formation of the socialist institution. The variances are further stressed by the emergence in the Soviet Union of the all-people state, where the dictatorship of the proletariat has already come to an end, while the people's democratic states have only started on this way of evolution.

In the socialist states the central problem of expanding these rights has become the *introduction of the differentiated system of legal safeguards*, in addition to what are termed material safeguards. It may also be said that it is only in the past years that the appropriate conclusions necessarily following from the extension of the "workers' rights" to the entirety of citizens have been drawn. This is not to say that the category of the workers' rights was alien to the concept of legal safeguards, but it is also undoubted that when the rights pertaining to all citizens are concerned the conditions of laying down detailed safeguards, general rules of conduct and of enacting these in high-degree legal rules are much more favourable. This should be stressed all the more because the 1936 Soviet constitution and the constitutions of the people's democratic states which — in many ways — adopted these patterns of regulation, even when putting in the foreground the all-comprising nature of citizens' rights, have mostly remained at the level of laying down the material safeguards, — a characteristic feature of the first stage of Soviet development. However, the realization has been gaining ground in the past years that the strengthening of material safeguards, the pointing out of such elements of the social system which are indeed the primary requirements of the exercise of all such rights, are not incompatible with the detailed elaboration of the legal safeguards of these rights and with their *laying down in constitutions*. The elaboration of legal safeguards has been to a large extent stepped up by the negative experiences gained in the period of the personality cult. This period served as a proof that, although there is no conflict and, indeed, there cannot be a conflict between individual and community interests in a socialist society, yet the occurrence of such incidental conflicts which originate in the shortcomings of the activity of the government machinery, are not precluded, particularly when the organs exercising state power superimpose their specific interests upon those of the community as a whole. It is concomitant with this realization that in socialist legal writings, in addition to economic and legal safeguards, numerous other types of safeguards are put forward as distinct phenomena. Thus e.g. the function of *political, organizational, ideological, etc.* safeguards is distinctly pointed out, when the implementation of the rights of citizens is discussed always with a stress upon the outstanding importance of the legal safeguards.

It should not be left out of consideration that the major part of the legal safeguards had already been evolved at an earlier stage of development but much of these had not been included within constitutional provisions. Another part of these is now in the state of formation. The new requirements are indicated by the recently enacted socialist constitutions and the preparatory work upon these are in progress in several socialist countries. This had, of course, to be taken into consideration when the papers on the single human rights were prepared, but owing to the fact that the analysis of the existing institutions was envisaged, in this volume the examination of institutions now emerging was necessarily restricted.

Certain elements of the evolution now in progress should all the more be taken into account because the requirement of the differentiation of safeguards and particularly the demand for laying down detailed legal safeguards may affect the way of regulating the fundamental rights also from another aspect. It may be assumed that e.g. the abstract method of regulation hitherto characteristic of socialist constitutions in this sphere will have to be reappraised. This may lead to the result that institutions which have hitherto been the safeguards of comprehensive human rights and thus left out from constitutional regulation, will eventually be considered as topics of constitutional provisions. The demand for a more specified regulation appears to arise in the field of what are termed personality rights.

The set of problems connected with the citizens' fundamental rights and duties was placed in the foreground after the second world war by all the *Congresses of the Communist Party of the Soviet Union* from specific aspects. In 1952 the XIXth Congress evoked in general the significance of democratic liberties. In addition to national independence it referred to the *expanding, strengthening and protecting of democratic liberties* as the principal political idea that would, in the years to come, have an effect on social evolution on a world scale. It is known that when at the XXth Congress (1956) the abuses and unlawful actions indulged in during the period of personality cult were analyzed, and the *consolidation and expansion of the socialist rule of law* was emphasized, the *legal safeguards of individual liberties* were, in the main, laid stress upon. At the XXIst Congress (1959) the many-sided expansion of *political democracy* and the relevant liberties were placed in the centre of discussion. The XXIInd Congress (1962) and the program of the Soviet Communist Party adopted by it focussed attention on the *fundamental rights of citizens* and together with it on the conditions of the *unfolding of personality* within the sphere of all the human rights. Subsequent upon the XXIInd Congress a rich program was provided for law-makers and constitutional regulation mainly by the requirement of "protecting through all means the rights and interests of citizens and securing veritable individual freedom". But the growing significance of the legal safeguards within the sphere of political liberties should invariably be taken into account. The importance of the citizens' independent actions, their free initiative and expression in solving the tasks with which society is faced, will be emphasized to an increasing extent. This requirement, in turn, involves that the well-defined respective spheres not only of individual and state but also of individual, government and social activity be delimited through legal

institutions. When thus the sphere of individual activity is delimited an added importance is lent to the constitutional and other legal regulation of the citizens' fundamental rights and duties.

As a result of the domestic development of the socialist states the *problem of the safeguards of economic, social and cultural rights* is raised in a novel way. The realization (which appears in several papers included in this volume) that the pattern of the regulation of these rights as now adopted comprises, essentially, a dual substance: namely the basic principles which express the social system, as well as the fundamental rights of citizens, will necessarily involve a reappraisal of the mode of regulation hitherto followed. These *rights — being the basic principles of the social structure* — are not rights pertaining to individuals but provisions binding government and eventually social organs. *The other aspect of the substance of these rights constitutes individual rights* for satisfying specific economic, social and cultural demands and for sharing in specific services. This requirement calls for a more diversified regulation of the legal safeguards of the economic, social and cultural rights — as fundamental rights — than has so far been resorted to.

In a socialist state which organizes production and the distribution of the commodities the introduction of these legal safeguards and the laying down of their main features in the constitution is not only feasible but (as will be seen later) it will become a generally voiced demand, in keeping with the advance of evolution. This amounts to saying that in a socialist state there is *no difference — as to their legal nature — between this group of rights and what are described as classical liberties*. Such a distinction may have a real basis under capitalist conditions though, and the legal safeguards may have a role to play in guaranteeing a certain minimum level.

It is another question that the system of regulation in socialist constitutions has not drawn the conclusions which follow from the dual nature of the economic, social and cultural rights as referred to above. The examination of the reasons would lead far; this was partly occasioned by the not quite clear perception of theoretical problems, but it may also be assumed that the uncertainty about the recognition of the universal nature of these rights has perhaps retarded the process of evolution.

A consistent assertion of the universal character of fundamental rights necessarily ties up the problems of citizens' equality of rights with the legal regulation of the safeguards of individual rights. Incidentally, the securing of the equality of rights from all aspects has been the central problem of the post-war evolution of human rights. (For this reason a paper is devoted in this volume to the theoretical foundations of the equality of rights.) While in capitalist states the chances of the evolution of the equality of rights end with the classical rights, in socialist states these apply to the entire catalogue of rights; the real equality of rights being the basic safeguard also of the enforcement of the economic, social and cultural rights.

It is perhaps unnecessary to point out that the consistent implementation of the universal nature of fundamental rights is *different from an egalitarianism*

conceived in the vulgar sense. The enforcement (the extent of which is expanding) of the principle of financial incentives runs counter in its perspectives to ideas which would prefer to introduce some kind of allocation system parcelling out among the citizens in an egalitarian way — the commodities produced and the services to be shared. Citizens may satisfy their needs in proportion to the work done, through the operation of the economic process in the economic, cultural and social sphere. But special demands of the kind, the satisfaction of which requires specific legal means, are increasing in number. Such safeguards have begun to emerge in various fields or in certain socialist countries. Thus, as it is known, an almost chronic manpower shortage in socialist states is one of the most outstanding economic guarantees of the right to work. On the other hand, the freedom of entering into labour contract means an adequate legal guarantee for the citizens to do work suited to their abilities and training. The relating legal safeguards have not yet been worked out in all fields, but the increasing demand for the introduction of legal guarantees is indicated by the adoption of several legal institutions. Thus, e.g. in several socialist countries government departments are legally bound to offer well-defined suitable jobs for men and women graduating from universities or colleges. It is also common knowledge that the increasing number of universities and colleges are capable of satisfying the demand for higher education to an annually increasing extent. Admission into specific universities or faculties appears already as an individual right of the citizen; for this reason a number of statutes provide that application of admission should be decided upon on equal terms, as far as possible, within the limits which observe also the plans of manpower economy. A number of socialist countries adopted detailed legislation which secures that citizens, after their titles have been duly examined, be allotted newly built homes on equal terms, in accordance with a strictly defined system, on the ground of the principle of the equality of rights. On the other hand, numerous illustrations could be adduced showing that the formation of legal safeguards in this sphere is not conscious enough, not comprehensive enough and lacking even in fields where the conditions are ripe for them.

The insistence in this field on the adoption of legal regulation or, what is more, of detailed legislation may appear somewhat unusual. Under the conditions of capitalist society legal regulation in this field might appear absurd or susceptible of consideration only in the conditions of emergency calling for state intervention. The demand for a legal regulation in a socialist state (which is in charge of the distribution of the products) derives, of course, from quite different reasons. In fact a number of such social, communal, health, etc. services are run by state and society — just in order to better implement the economic, social and cultural rights — where the sums to be paid by citizens for their use are much lower than their financial value or overhead costs. The fixing of the amounts of reimbursements is not merely a question of economic policy; it is closely connected with the perspective of the evolution of socialist society gradually adopting the principle of communism, namely in the field of distribution “to all according to his needs”. Already at the present stage of the development of socialist states an increasing

portion of individual incomes is made up of benefits, outside of wages and salaries, where the sharing in the commodities produced is not a countervalue of the work done, but is based on the equality of citizens and equality of rights. This is particularly striking in the field of cultural, social, public health and other communal services which are practically almost gratuitous. The fundamental function of the general legal safeguards in this context is to actually ensure equality, and thereby to bar the way of establishing privileges for groups or individuals.

This volume devotes a large space to the economic, social and cultural rights of citizens as warranted by their significance, and indicates the new problems encountered within this scope.

A number of new questions are raised in socialist states by the constitutional and other legislative regulation of what are called *classical liberties*. These new issues are closely related to the process of evolution now going on in the Soviet Union and people's democratic countries in developing all aspects of socialist democracy. Socialist democracy is evolving nowadays particularly in two directions: one trend is the strengthening and developing of the social and representative elements of the state structure, the other is the furthering of the activity of autonomous social organizations, voluntary associations which are independent of government departments and on which quite a number of government functions is being transferred. Both trends are concomitant with an expansion of direct democratic institutions. This process of development places in the foreground the issues of what are called *political liberties* and the continued diversification of their legal safeguards. The strengthening of the rights of personality, their increased importance involves of necessity a more precise definition of the individual liberties. Consequentially a part is devoted in this volume to the new forms of appearance of the most important classical liberties.

When single rights and duties are analyzed, difficulties are caused by the fact that in several socialist countries the whole set of statutes regulating fundamental rights has been undergoing almost continuous changes in recent years. It is namely a fact that in the majority of socialist constitutions the new requirements relating to the regulation of these rights are not adequately reflected. In the Soviet Union e.g. the chapter of the constitution of 1936 still in force on the citizens' rights has hardly changed in the last 30 years, while tremendous changes have ensued in that period in the life of the Soviet state and society. These changes are in most parts reflected in statutes implementing single provisions of the constitution. As a result there is a certain gap between the provisions of the constitution and the statutes materializing them in detail. The preparatory work now going on in respect of the introduction of a new constitution is faced with the task to summarize the most important aspects of this evolution as a fundamental enactment. And at the same time it can also be assumed that the constitutional provisions now in preparation (and suited to the needs of a class-less, all-nation society) will have a major impact upon the further evolution of the entire Soviet legal system, and within that upon the legislation on the citizens' rights and duties. In the majority of people's democratic countries — among these

also in Hungary — the constitutions in force were mostly adopted in the first stage of the socialist development. The preparatory activity of drafting new constitutions has already started. This activity envisages to consolidate the achievement hitherto attained in laying the foundations of a socialist society, and to define the new-type safeguards of the rights and duties has already been started. The socialist constitutions adopted in recent years (those of Viet-Nam, Mongolia, Czechoslovakia, Yugoslavia) already display some new elements in regulating rights and duties. References to these are found in this volume in all instances. It should not be left out of consideration either that the social conditions in these countries are, to a greater or lesser extent, varied. It should also be added that these countries have only made the first steps in the way of practically implementing the institutions as laid down in the general provisions of the constitutions. This notwithstanding, a certain material is furnished by these new constitutional provisions for the relating theoretical abstraction.

This volume contains the selected, comprehensive theoretical chapters of a voluminous work published in 1965 in Hungarian "The Citizens' Fundamental Rights and Duties" ("Az állampolgárok alapvető jogai és kötelességei") — a collection of essays. The Hungarian publication which is much lengthier than the present volume did not set the aim to cover the entire sphere of citizens' rights and duties, let alone to give a final conclusion on the subject indicated and held important under Hungarian conditions. That volume merely intended to place in the foreground the most comprehensive issues and thus to lay the basis, to smooth the way, for a many-sided detailed research activity. The latter, of course, should be based on the direct study of social conditions in all fields which have an important bearing on the enforcement of human rights. Completeness can even less be claimed for the present, abbreviated, English edition. When compiling the material of the present volume, the aim was pursued in the first place to give the reader, as far as possible, a comprehensive survey of the Marxist assessment and concept of the past and future trend of evolution of the citizens' fundamental rights, to give an insight into the general state of these rights in the socialist countries, and to provide a more detailed information on the constitutional regulation and practical implementation of the most important human rights in Hungary. These considerations served as a guide when the chapters concerned were made shorter or when the chapters in the Hungarian edition which concern other aspects, e.g. economic, social and cultural rights or other liberties, were rewritten and summarized.

The Hungarian edition which serves as a basis for the present volume, was launched on the 175th anniversary of the 1789 Declaration of the French Revolution — the first synthesis of basic human rights — documenting thereby that socialist Hungarian jurisprudence appreciates the significance of this anniversary and together with it all the revolutionary traditions of the struggle waged for the vindication of citizens' rights. This is not to say that in the second half of the 20th century, ideas originating in the 18th or 19th century should be still defended. The social progress of nearly two centuries (and within that period

almost half a century of socialist practice) has widened and made up-to-date the concept of these rights for us too. But we are also convinced that the formation of really momentous ideas and the way of their implementation can only be measured in centuries. And even if for a superficial thinker there may appear several identical aspects between the abstract maxims expounded by scholars during the Age of Enlightenment and the ideas, concrete objectives and the plans which mould the future of the socialist society, this should be attributed to the fact that the conditions for settling once and for all the relationship between community and individual, the overwhelming antagonism between proletarians and bourgeois has been surpassed in a vast territory of the globe, in the socialist countries. The political thinkers in the Age of Enlightenment could not have been aware of the internal contradictions which were to tear apart bourgeois societies. On the other hand, the socialist societies — advancing towards communism — have created the conditions of assessing the evolution, expansion and practical implementation of fundamental rights through a prism cleared of the class-antagonisms between individual and community, between personality and society.

FUNDAMENTAL QUESTIONS CONCERNING THE THEORY AND HISTORY OF CITIZENS' RIGHTS

I. THE FORMATION OF THE THEORY OF CITIZENS' RIGHTS

1. THE SOCIAL FUNCTION AND THE FORM OF THE PROCLAMATION OF CITIZENS' RIGHTS

Citizens' rights¹ appeared, as the "rights of man and citizen" in the course of, and as a result of, bourgeois revolutions as a part or chapter in the constitutions, or in declarations which had particular importance for constitution-making.² These parts of the constitutions or declarations were intended to lay down and to proclaim in a solemn manner those fundamental rights which were the due of the citizens of the emerging bourgeois state in connection with their economic and political activity. The totality of the rights comprised in the constitutions was on the one hand a negation of the production relationships, and the political ones based thereon, which had characterized feudal state and society, and on the other hand gave expression to the rejection of the despotism of the feudal state and particularly of the absolute monarchy. As a consequence, the historically evolved catalogue contains several rights the adoption of which originated in the rejection of feudal conditions, or in the efforts directed at warding off their undesired return. These rights appeared however in conjunction with such fundamental rights which expressed in a positive direction the principles and conditions of the capitalist system of society and of the bourgeois state, in the form of the citizens' rights. The emergence and evolution of citizens' rights should be considered in the unity and dialectics of this positively and negatively determined character of theirs.

Philosophers and politicians formulating theoretical pretensions and practical demands connected with citizens' rights conceived of, and made appear, these rights as if these were inalienable, eternal, attaching to the individual at all times and under whatever conditions, irrespective of the prevailing production and the resulting class relations.³ This effort was one of the reasons why these rights were formulated in a most generalized and abstract way. It is another characteristic contradiction of the views on citizens' rights and the related legal institutions in the 18th century that the novel, revolutionary content was clothed in certain

¹ Hereinafter — as will be explained later — citizens' rights mean what are called in legal writings human rights, civil rights, fundamental rights or fundamental liberties.

² Such a declaration was the preamble to the constitution of the state of Virginia: the "Bill of Rights" dated June 12, 1776. The most important declaration was adopted by the French Constituent Assembly on August 18—27, 1789 as the "Déclaration des droits de l'homme et du citoyen". This declaration was included as a preamble in the French constitution of 1791.

³ Engels, in *Anti-Dühring*, 1950, (in Hung.), pp 17—18, summarizes the ideas of those who "enlightened the minds in France for the revolution to come" in the following way: "These thinkers hold that the sun has just risen (the realm of reason has been born); as from now superstition, lawlessness, privileges and oppression will be discarded by eternal truth, eternal justice, equality rooted in nature, and by the inalienable human rights."

traditional theoretical constructions and legal institutions. Those individuals who laid down the theory of citizens' rights and drew up a catalogue thereof were striving to justify contemporary demands also through making use of ideas and legal patterns adopted in another age, under different conditions and discharging other functions. Consequently, in order to be able to approach the actual historical gist of citizens' rights, the mistaken nature of such historical parallels should be discovered or, in other words, the novel character of citizens' rights as compared to previous ages and the ideas thereof should be made clear.

A number of bourgeois authors writing on citizens' rights coupled the revived natural law theory which served the foundations for the theory of citizens' rights with the natural law elements found in Greek philosophy or in mediaeval scholastic concepts; attempts were made to prove that the latter were precursors of the former. What is more, even the theory of social contract which was destined to justify the structure of citizens' rights was tied up with the ideas and institutions prevailing in preceding ages. This means, however, that social concepts and institutions were conceived of as independent of the determining social conditions, and were thus mistaken. In fact, such a concept regards certain formal elements as making up the substance of phenomena, leaving aside in this manner their social substance. It must be obvious that the natural law on which the writers of Rome focussed their attention (and which according to Ulpianus is . . . "quod natura omnia animalia docuit") could not voice the demand that at least a formal equality of rights be laid down for all citizens, and that a certain legal security be safeguarded for the ruling class. No, this natural law was much more an attempt to generalize case-law, to create a theoretical foundation for generally binding legal rules with the obvious addition that its underlying function served the coming into fore of a legal philosophy susceptible of justifying the legal institutions of slave-owning states. In the same way scholastic natural law cannot be considered but as an element of transition leading from divine law to man-made law serving as it were a link between the two, and which was ultimately destined to justify as "natural" a man-made but actually inhuman law. As opposed to these trends of natural law, the natural law emerging at the dawn of the bourgeois revolutions was not meant to serve the purposes of conservation and justification: it was discharging a revolutionary role. It was directed against the existing feudal system and gave expression in an abstract form to those revolutionary efforts spurring the bourgeoisie to create (backed by the emerging capitalist production relations) a new-type state and law — the bourgeois state and law, to seize political power and to organize the same in an altered way. The new content of natural law evolved in accordance with this class substance, and it was this from which the thinkers of the Age of Enlightenment deduced the demand that the emerging new-type state safeguards those rights of man which were rooted in nature itself and were inalienable even by the social contract. In this context it was natural law, with a well-defined content at that, from which the content and scope of citizens' rights to be safeguarded were deduced. The thinkers of enlightenment namely had in mind not natural law in general (as it were the sum total of

supreme ideas created by a force falling outside human activity) but the natural rights of *man* which he cannot renounce even by virtue of a social contract. Through the social contract and through proclaiming the natural, inalienable rights of man, natural law became more human; state came to be considered as man's creation and appeared in a way that certain aspects of its human-made nature (which fully conformed to the substantial rights of the bourgeois) were justified by resorting to natural law. In this way citizens' rights appeared at the dawn of capitalism in bourgeois political and legal philosophy as the unity of deductions drawn from the social contract and from the rights of man which were claimed to be inalienable.

Legal writings suggest in numerous instances that the legal documents adopted at the end of the 18th century relating to human rights and mentioned in the aforesaid were but subsequent links of the chain which includes England's Magna Carta of 1216, the English Petition of Rights of 1627, the English Bill of Rights of 1679 or, for that matter the Golden Bull of Hungary of 1222. The difference in substance is clear also in these instances: these instruments assumed a form of an agreement between the sovereign and the nobility, certain general safeguarding of specified privileges which were proclaimed in an agreement concluded between the ruler and the nobility. These early Charters or Bills display quite clearly their bi-lateral agreement nature, whereas the declarations on citizens' rights adopted in the 18th century show not only a substantive difference but also one as to their form.⁴ The most what can be discovered in the way of formal similarity is that neither the early Charters and Bills were formally Acts of Parliament or legal rules (i.e. enacting the rights and duties of the ruler and the nobility). Instead, they represented a specific variety of legal instruments, characterized — just like the completely new constitutions are so characterized — by being declarative and not imperative. But the American declarations on citizens' rights or the French declaration on the rights of man and citizen are not mere agreements or contracts anymore but acts adopted through unilateral actions by parliaments, and their form shows the characteristic feature that seemingly not a single class is the beneficiary of these rights but the enjoyment thereof is said to be secured for all citizens. These, then, are no longer "covenants" bargained between rulers and subjects but statutes of a constitutional character which have retained the declaratory form only outwardly. (Though writers in later epochs, as will be seen subsequently, were to question — and are still arguing — whether these documents should be regarded as real legal rules.)

When the constitutions of capitalist states and those of socialist states are compared from the aspect, how far and in what manner do these documents reflect the relations between the foundations of the socio-economic system and their political-legal superstructure, — major differences will be discovered.

It is a feature of socialist constitutions that these are unquestionably political-legal documents.

⁴ For more particulars cf. authors': *Az emberi jogok mai értelme* (Modern concept of human rights), Budapest, 1948, p. 22 et seq.

It is a characteristic of socialist constitutions that they are not limited to legal, constitutional issues; i.e. they regulate not only the form of the given socialist state, the structure of government departments, the basic principles of their activity but also contain the principal provisions in respect of the socialist state as a specific new *type* of states, provide in an unequivocal way for the social ownership of the fundamental means of production, lay down that the economic basis in socialist states is constituted by the socialist production relations, reveal the interconnections between the socialist production relations and class-power relations. In short, they announce the socialist state to be a state of the working people. Summing up the above it may be said that socialist constitutions contain *direct* expressions of the basic facts and requirements related to the economic system and political structure of socialist states. As against this: the constitutions of bourgeois states usually do not contain statements or provisions concerning the substance of bourgeois states, the underlying production relations and the class relations determined by the former. In the main, only constitutional issues are covered by these documents. Thus, it would not be an exaggeration to say that bourgeois constitutions are *directly* rather in the nature of legal document or — as will be seen later — have become such to an increasing extent; it goes without saying that legal provisions themselves reflect the distinctive features of bourgeois states and the policy of the given state and those production relations which found expression in the concentrated form of the policy pursued. The bourgeois concept of constitutions as developed in the course of history, is based on this formal, secondary principle: the class character of the state is not touched upon, and the constitutions content themselves with legally defining and specifying the structure of the given state. Compared to this restricted concept of the constitution the declarations on citizens' rights went, at the outset, much further; this applied particularly to the American but also to the French declarations which gave expression in a specific way to the basic principles of the economic system and political superstructure of the capitalist society through proclaiming human rights. When these constitutions provide for the freedom of property, require its security, proclaim equality before law, as one of the basic principles of bourgeois society and within this context make statements in regard of public authority, government, sovereignty, etc., what they do express in fact are the economic bases and political structure of the capitalist social formation, in other words they lay down political principles in the shape of citizens' right.

In such a way a connection evolved between the declarations on the rights of man and citizen and the contemporary or subsequently enacted bourgeois constitutions, in which the declarations discharged the functions of political documents expressing the rejection of the feudal system and the economic bases and political maxims of the emerging bourgeois state, while the constitutions were destined to a certain extent to provide for the legal details and their enforcement and could be regarded from this angle more "legalistic" than the declarations in question.

In the course of the subsequent operation of the bourgeois state and its constitutions the importance of issuing declarations on citizens' rights was gradually

relegated into the background. Similarly, legal writings attributed a diminishing significance to these declarations as political documents. In assessing the tenets contained in the declarations on citizens' rights the writers emphasized the legal elements and, instead of examining how these declarations reflected the principles bearing upon the social system, reduced them to the level of principles applying strictly to citizens. In the course of subsequent development citizens' rights were usually included within the constitutions and, forming a chapter thereof, were reduced to defining a single aspect of government activity. Simultaneously with this development bourgeois legal philosophers questioned the "legal nature" of these declarations, i.e. whether these also involved obligations on the part of bourgeois states. They no longer insisted on the comprehensive importance of the declarations on citizens' rights as regards the political and social structure of the state. The stand was universally adopted in constitutional law that constitutions should contain citizens' rights in the preamble (i.e. in a manner resembling some kind of declaration), separate from the actual provisions of the constitution. In this case it is a legitimate inference that such preambles even lack the legal significance, legal validity.⁵

Bourgeois writings often criticize the socialist constitutions because these instruments reach beyond the legal provisions strictly taken and devote whole chapters to the economic and political structure of the socialist society. But when the declarations born in the period of the emergence of bourgeois states are analysed from this aspect, it becomes clear that bourgeois constitutions — at least in such declarations — had also "non-legal" constituents: admittedly these were included, in an indirect manner, through maxims relating to citizens' rights. Incidentally, when socialist jurists make a comparison between socialist and bourgeois constitutions they usually point out as a distinctive feature of the socialist constitutions, that the latter contain explicit provisions on the socialist system of economy and the political foundations of the state. If the above arguments are valid, this statement needs some correction because — if the declarations treated are considered as intergal parts of the constitutions — (and they cannot be considered otherwise) bourgeois constitutions contained likewise tenets on the capitalist system of economy and its political superstructure (though, of course, these were given expression in a specific form, under the guise of defining the citizens' rights and their system). Subsequent bourgeois constitutions have, as a matter of fact, retained remnants of the latter in subsequent periods, though the mode of laying these down became not as clear, unequivocal and prominent as it had been in the declarations referred to in the aforesaid.

Thus it may be said that statements on the economic bases of capitalist society and its political superstructure are laid down in bourgeois constitutions in an indirect way, through the inclusion of citizens' rights. However, the relationship

⁵ The draft of the French constitution of October 27, 1946 contained the list of citizens' rights in the form of declaration, but the final wording, as expounded by the rapporteur on the draft, M. Coste-Floret, contained "a simple constitutional preamble" since, as it was claimed, a declaration would have been but a parody of the work done by great ancestors.

between the state and its citizens is touched upon in a general form, professing seemingly "eternal" principles, whereas in fact these regulate or declare the relationships established or to be established in the capitalist society. The conclusion cannot thus be avoided that the regulation of citizens' rights in the bourgeois society involves a significance which reaches beyond the conventional legislation and is of major importance for the whole of society, because it is tantamount to expressing in an indirect way such relationships which the socialist constitutions express differently, unequivocally and openly.

2. DIFFERENTIATION BETWEEN HUMAN RIGHTS AND CITIZENS' RIGHTS

The relatively most complete, classical bourgeois regulation of citizens' rights was contained in the declaration on the rights of man and citizen, "Déclaration des droits de l'homme et du citoyen" adopted by the French Constituent Assembly in August, 1789. The very title of this document contains the differentiation around which arguments were to develop in subsequent epochs; namely, whether the problem is about the rights of *man* or the rights of *citizen*. In other words whether, within the category of citizens' rights, a separation was possible between the rights of man and the rights of citizen, meaning "man" in a comprehensive way and citizen of a given state? As is shown by its title, the French declaration adopted without any hesitation the principle of duality, though when listing these rights, this separation, this duality was not carried to its logical conclusion, and was not very much attempted, even. Accepting the concept of citizens' rights as those of man and citizen, our analysis will reveal not only the nature of the ideas and theories connected with citizens' rights but, ultimately, also the gist of those social relationships whereof these rights and the relating concepts are mere reflections. It was by this method, among others — i.e. through analysing the rights of man and citizen and the connected concepts — that the young Marx arrived at the knowledge of the interdependence of the structure of capitalist society, its bases and superstructure. His relating critical analysis carried him a step further in forming a notion of a future society which would shake off the yoke of private property. His paper on "The Jewish Question"⁶ published in 1844 is concerned foremost with the emancipation of Jews, but also constitutes a basic source of the Marxist doctrine of citizens' rights; in the next pages this will be used as a point of departure, though it is undoubted that this work, like other works written by him when young, does not contain in a ripe form the teachings connected with his name.

In this work Marx came to the conclusion that the differentiation made between the rights of man and the rights of citizen adequately corresponded to the difference made and duality adopted in capitalist society between man as the subject of productive activity, and man as a member of the politically organized society —

⁶ *Marx and Engels, Works.* (In Hung.), Vol. I. 1957, pp 349—377; quotations on the following pages are found on pp 356—371.

between man as a private individual and as a member of the community. In other words, this separation reflected that under capitalist conditions man has to lead a double life: one earthly within capitalist production relations, and one celestial within the political superstructure of these relations. The subject of the capitalist production is man as a single individual who embodies private interests while within the state man lives as a member of the "human race" i.e. he represents the general interests of the bourgeois class. As put by Marx:⁷ "The old bourgeois society bore a *directly* political character i.e. the constituents of the bourgeois way of living like e.g. property, family, the mode of working were raised to the level of state activity in the form of landed interests, nobility and corporations". In other words economic power was a direct expression of the structure of political power, and economic compulsion was directly covered by political compulsion. As a result of bourgeois revolutions economic and political power became somewhat separated; according to Marx, the political revolution (i.e. bourgeois revolution) "*deprived bourgeois society* (i.e. the material conditions of life) *of its political nature*". The eliminating of the direct political nature of production relations meant also the shaking off of those shackles which "fettered the self-centred spirit" of private property under the conditions of feudalism; under capitalist production relations there appeared their subject in his complete blunt reality: the selfish individual, the capitalist who regards in the "earthly life", in the production process "other men as his tools". Different from this is man as a member of the capitalist political society, one who shares in the political power who, in this relationship, is bound to subject his selfish individual interests to the interest of the class as a whole. Thus, there arises a contradiction between "*the living individual and the citizen*" . . . a contradiction prevailing between "*bourgeois and citizen*", between the member of the bourgeois society and the "*political lion's skin*" thereof. Consequently, the differentiation between, and the duality of, the rights of man and citizen is in fact an expression of this contradiction.

The young Marx also indicates — though not yet in a crystallized form — why the bourgeois, the subject of capitalist production, appears in connection with the rights of man and citizen universally as "man". This fact reflects, in an abstract way also the dual character of the position occupied by the system of capitalism within bourgeois society. The bourgeois as the subject of the capitalist production relations is, within this context, a non-political individual; he is in fact a negation of the man living under political bonds, i.e. he is active in the production relations which precede and determine the political ones appearing accordingly as a non-social "natural" man. Human rights are consequently regarded in

⁷ By "old", Marx meant the feudal system, more closely the feudal production relations. He uses the term "bourgeois society" or "bourgeois living" to denote these "material living conditions" which had been summed up by Hegel under this name, following 18th century French and English examples (see *Marx—Engels*, Preface to the "Critique of Political Economy"). *Marx—Engels: Selected Works*. Budapest, 1949, (in Hung.), p. 339. This early work of Marx, cited several times subsequently, contains Hegelian phraseology and also Hegelian ideas.

bourgeois philosophy as natural rights, i.e. rights which have a precedence over the rights of man as the member of a politically organized society, i.e. over the rights of citizens. As regards their content "the so-called human rights, the *droits de l'homme*, as distinct from the *droits du citoyen*, are actually the rights of the member of bourgeois society, of the selfish individual who stands apart from men and community", in other words "the rights" of the owner of capital, devolving from his position occupied in the process of production. In connection with the so-called human rights "human liberty is spoken of as an isolated, entrenched, nomadic liberty"; what is called the right to liberty (which is in the centre of the so-called human rights) reflects, in fact, not an association but a dissociation of men. Marx comes to the conclusion that none of the rights called human reaches beyond the selfish individual, i.e. the owner of capital and the exploiting man. Accordingly, the practical enjoyment of the human right of liberty is but "the human right to private property"; the right of equality is nothing but a wording of that liberty which expresses the equal "liberty" of all individuals; security is in fact a "safeguarding of selfishness". On this way, all of the human rights are rooted in the conception by which "individuals are regarded to be actual and real men in their quality of not citoyens but of bourgeois".

When the differentiation made between man and citizen and the duality of this concept are examined in this manner, it becomes obvious that the emphasis is not upon the rights of the citizen but on those of man; theories born in the Age of Enlightenment projected these alleged rights of man in the shape of natural rights, claiming their independence of the political organization of society. It is clear that the so-called human rights do in fact have a precedence over political rights in the bourgeois system, for these express the capitalist's position within the capitalist production relations, and the rights of citizen are but rights accorded him within the political superstructure based on the former. There can thus be no question of rights of "man" which would be nature's grant to men or would be eternal, inalienable; it is really a question of very realistic relationships pertaining to the capitalists and exacted by them as required by the production relations of capitalism. The so-called human rights are not rights defining man's basic relation to society but are the expressions of the capitalist structure of society in an abstract and distorted form. The peculiarity and unrealistic character of this form lies in the fact that it expresses as a right the relationship which is in fact the foundation of every single right, the right regulating property relationships included; in addition it is left out of consideration in this pattern that every single legal manifestation — as follows from the substance of law — is necessarily also of a political nature. Carrying the argument to its logical conclusion it must be stated that all fundamental rights — including those which are called human rights — are citizens' rights because the material relationships of society find expression in political relationships. When attention is paid to the fundamental import of the relationships which appear as human rights it becomes clear that — having for the moment in mind the bourgeois differentiation — the rights attributed to citizens can have only a secondary importance as compared to the so-called

rights of man, because the relations underlying the latter determine also those rights which are man's due in the political superstructure of society.

But it also follows from the above that the rights of citizen are not as unconditional as the so-called human rights because various political systems may exist in a bourgeois society including such a variety in which the citizen is completely deprived of his political rights while the "rights of man" and the most outstanding of these: the right to private property, continue to subsist unchanged. This distinction which is rooted in objective reasons was of course reflected in the entire evolution of the bourgeois notions on citizens' rights. When doubts were expressed in bourgeois legal and political writings, these generally referred to the "legal title" of citizens' rights.

As could be seen, the young Marx unveiled the substance of citizens' rights and arrived also at the conclusion that the system of citizens' rights which the writings of the period of enlightenment, but also the French declaration on the rights of man and citizen, in an abstract form declared as an eternal system, was by no means eternal but determined and specified by social relations. As Engels wrote dealing with the ideas of justice, equality and human rights: "The great thinkers of the 18th century were able to transcend the limits set by their age to no greater extent than any of their predecessors."⁸ These thinkers did not realize either that aspect of the citizens' rights that they were historically determined, or that their dual nature meant an expression of the contradiction between the economic foundation and political superstructure of the capitalist system. The theory on social contract which was held as the foundation of the concept of citizens' rights — though its imaginary nature was recognized — did not and could not provide a consistent explanation either as regards the unity of citizens' rights or the distinction made between the rights of man and the rights of citizen. The great bourgeois pioneer thinkers themselves were self-contradictory when connecting the social contract on one occasion with the rights of man, and on another occasion with the rights of citizen. Thus Rousseau, who lays emphasis rather on the political superstructure of society and taking the social contract as his point of departure puts the state, the political association into the foreground, writes that by virtue of the social contract . . . "all members of society, *bringing all their rights with them* become absorbed within the entire community" . . . and "that merging was effected with no *condition at all* . . ." From this it may be inferred that the individual has no rights granted by nature or in other words all his rights originate in the social contract, the political association. But he becomes self-contradictory when he writes in another place that the supreme power "be it unlimited sacred and inviolable must not transcend and does not transcend the limits defined by the universal agreements", i.e. it cannot encroach upon private relationships because it is held obvious by him that besides or despite the social contract "all individuals *are completely free* to possess everything left untouched of their property or liberty by the agreements"; "the concept holding that by virtue of the

⁸ Engels, *Anti-Dühring*. Budapest, 1950, p. 18.

social contract private individuals really give up something of their own is entirely erroneous" — he writes at another place.⁹ The private sphere, i.e. private property, is not limited by the social contract, but the individual as a member of a politically organized society has given up his rights completely; this is, in fact, the self-contradictory concept which — expressed in the distinction between the rights of man and citizen — reflects, in the last analysis, the interdependence and contradiction between the economic and political relations of the capitalist society.

It clearly appears that bourgeois philosophers and writers on constitutional law were faced with a difficult task by the above-described duality and self-contradiction of citizens' rights. Though this dual and predetermined nature was bound to emerge in some way, and indeed it became conspicuous, jurisprudence was understandably making efforts to evolve some consistent concept. One trend, in order to achieve this end, professed the natural law origin and character of the entire set of citizens' rights regardless whether these were connected with production relations based on private property, or with the political superstructure. This trend of philosophy considered the sum total of these rights as the manifestation of the relation between the individual (who was conceived independent of the state, standing apart from it in an abstract way) and society and its political organization, the state. This concept necessarily led to investing the citizens' rights with an absoluteness and with an eternal and inalienable character. The adherents of other trends made efforts to form a theoretical explanation and justification of the unity of citizens' rights not in the sphere of man's but of citizens' rights; starting from this assumption, citizens' rights appeared as mere concessions by the state to its citizens. This ultimately led to a static concept, the proclamation of the state's omnipotence, and from the side of law the whole problem of citizens' rights was reduced to the level of legal positivism.

Of course, between these two extremes there may be found a wide range of transitions, almost an unlimited number of both natural-law and positivist concepts. Still, when taking the historical view as a clew, some general conclusions can be drawn. It may safely be said that at the time of the emergence and during the first stage of evolution of the bourgeois state — and this seems socially justified — it was generally held that citizens' rights were human rights; this concept was distinguished by a certain idealization of these rights and by raising these above the state, society and the legal system. This was due to the efforts to reject feudalism through proclaiming citizens' rights and amounted to some kind of struggle against feudal institutions and concepts.¹⁰ But the underlying social reasons for professing that view should be looked for in the situation prevailing at the dawn of capitalism: private property, private contracting and free enterprise

⁹ Rousseau, J. J., *The Social Contract* (in Hung.), Book I., Chapter IV., Book II. Chapter IV. pp 100, 129. (Italics are mine).

¹⁰ It is worth noting that it is explicitly laid down in the French constitution of 1793 in respect of the freedom of conscience, of expression and of assembly: "the proclamation of these rights was necessitated by despotism and its memory".

were held "sacred" in the sense that these did not call at all (or to a minimum extent) for direct state intervention, and the capitalist class was not compelled to urge direct action by the state in order to secure their protection. Thus, within the category of citizens' rights the human aspect was still dominant. This, in turn, affected the assessment of the whole category of citizens' rights. Then, parallel with the gradual sharpening of the internal contradictions of the capitalist society, the capitalist mode of production compelled the state to take certain action also in the economic sphere. In the extent as the capitalist class was in need to resort *directly* to the state power in order to protect capitalist production relations, the "natural-law nature" of citizens' rights was wearing off. The general concept was assuming on the one hand a positivist character, which meant that citizens' rights came to be regarded as rights secured or even created or conceded by the state; on the other hand a sceptical view was prevailing which questioned whether the entire set-up of citizens' rights could be regarded as real rights at all?

The question whether citizens' rights are rights of man or the rights of citizens which was treated in the French declaration in the sense that these pertain in part to man, in part to the citizen, was answered by bourgeois *legal* philosophy in a way that these rights were considered either as belonging in their entirety to man, or to the citizen. Both are extremes but it may safely be said that in the whole bourgeois jurisprudence the distinction made in the French declaration — though more in its title than in its wording — was relegated into the background or was almost forgotten.

As regards the gist of the matter: both the rights of man and of the citizen were in fact *citizens' rights* and could not have been else. Although this differentiation played a major role in spreading a mystical veil over the relationship between economy and politics (the determining and the determined phenomenon), and envisaged to present the right to private property as "natural", i.e. sacred, this did not make much difference as regards the uniformly political-legal nature of the rights of man and citizen. All the rights included in the relevant declarations and bourgeois constitutions cannot be, in their entirety, but rights prevailing within the sphere of the political-legal superstructure founded on the basis of the capitalist economy. Within this superstructure these rights constitute a specific legal institution which is well adapted, disguising the nature and class character of the relationships embodied by it, to react upon and to support the economic basis, protecting thereby the political power of the capitalist class. Thus in reality there was never a question of "natural" or "human" rights but always of citizens' rights, rights which were established by the state, enforcing the will of the ruling class, determined in the last analysis by a class-will embedded in the capitalist relations of production. Within the scope of these rights the freedom of private property, of contracting, and enterprise is "sacred" and "human" for it underlies the whole structure of the capitalist state; but the range of the rights of the citizen is less sacred because the interests of capitalist production, given certain historical conditions, can well be served by a political system under which these rights of the "citizen" are laid aside.

The citizens' rights are, consequently, not the rights of man and the citizen, but — if conceived in the above way — solely the rights of the citizen, the civic rights. They do not embody the relationship between man standing apart of society and the latter — in spite of efforts to express them thus — but the relationship between the state and its subjects and that of the subjects among themselves. All distinctions made on the ground of the duality of economic and political power and their interrelation, which are necessary when classifying the citizens' rights, are distinctions *within* the unity of citizens' rights. It is only natural that a way of thinking which seeks to explain legal phenomena in themselves, cannot discover an answer, and must resort to the *a priori* assumption of a natural law, or of a state which is considered as an end in itself. When, however, the entirety of citizens' rights is examined with a view to reveal the veritable grounds of their formation, the real foundations of the capitalist system will be reached, and in the historical appearance and philosophical separation of these rights the connection between the capitalist production relations and their political superstructure will be, eventually, discovered.

3. EQUALITY, LIBERTY AND CITIZENS' RIGHTS

The dual nature of civic rights outlined in the aforesaid, as revealed by the young Marx, underlies the whole bourgeois concept of citizens' rights, in all its details and aspects. The separation of the rights of man and citizen appeared in political and legal theory as the duality of liberty and equality. The connection between the rights of man and citizen was reflected in the relationship between liberty and equality. It has already been pointed out that Marx in his early works succeeded in discovering the roots of the "human" right of liberty, namely private property and its subject, the isolated selfish individual, all in all the capitalist ownership of the means of production. As written by Marx: "The human right of liberty is based not on the relation between men but, on the contrary, on the separation between them".

The idea of liberty as evolved in the bourgeois society was, essentially, the freedom of capitalist ownership, free enterprise, trading and contracting. This aspiration at liberty was expressed in a mystified way, through numerous transmissions of law, parceled out also in other citizens' rights, and became amalgamated, sooner or later, with the idea of equality. It will be pointed out in the subsequent pages that the economic liberty taken in the meaning as outlined appeared rather frequently in the slogan of equality. But the decisive, determining fact was that the real "human" rights invariably meant the capitalist freedom echoed as general human liberty. It is worth-while to note that equality was not even mentioned in the French declaration of 1789 among the "natural and inalienable rights of man". In this document, liberty, ownership, security and the right to resistance against oppression were pointed out as universal rights. If the last-mentioned right, typical of the efforts to overthrow feudalism, is disregarded, it becomes obvious that what are called fundamental human rights are all derived from property. What really

mattered was the liberty and security of property: the gist of human rights consisted in property. Equality as a right pertaining to man was included only as late as in the 1793 constitution (which incidentally omitted the right of resistance against oppression). Marx noted that this subsequently appearing equality had had a non-political meaning too, inasmuch as all individuals had been regarded as equally free, isolated and independent bourgeois; when this purport is kept in mind, equality can be traced back to liberty and determines the latter under one of its aspects. As a matter of fact, the declarations on citizens' rights define liberty through separating man from man and even juxtaposing them; thus e.g. under the 1789 declaration liberty means a freedom of action which does not encroach upon others and is limited merely by the identical liberty of others. It should be repeated in this context that liberty is joined by the idea of equality on the ground that human rights pre-suppose an *equality of freedom* within the private sphere, in the acquisition of private property in free enterprise and contracting. It may be pointed out that this concept of liberty in respect of other individuals became a determining constituent of Kant's notion of law. It was held by Kant that liberty is the sum total of those prerequisites through which the autocracy of an individual can be reconciled with the autocracy of others in accordance with the universal law of liberty;¹¹ this concept was in harmony with the theoretical requirements and structure of bourgeois private law and which was expanded by Kant into the universal notion of law. Thus it is liberty which corresponds to the "human" aspect of citizens' rights; but liberty does not convey man's independence of society and of the process of production: on the contrary, this involves the assignment of man, of his conduct within a specific mode of production, under the conditions of capitalism when this conduct is basically characterized by capitalist exploitation and a wolf-like antagonism among the individuals themselves. Liberty thus boils down to the liberty of private property or to put it more precisely: the equal liberty — in principle — of private property for all. On the other hand, *equality* as another common, comprehensive feature of another group of civic rights involves, in principle, that all citizens have equal rights in participating in the political organism of society, and within the latter set up that — in principle — all subjects of the state are able to avail themselves of these rights.

No need to say that this is not an actual equality; this only means equality before the law, the same as liberty also conveys a legal possibility within the system of citizens' rights. If from one angle liberty is an expression of the equal opportunities of acquiring and using property, equality from another angle means the liberty of participating in political activity irrespective of whether this right is made use of in reality, or in other words whether such a legal equality is or is not actually prevailing. The rights of the citizen contain in the various declarations fundamentally those rights which are, in principle, the equal due of all citizens, of the state in the sphere of government activity. They are destined to prevent any discrimina-

¹¹ See: *Kant, Metaphysik der Sitten*. Berlin, 1870, pp 31—32.

tion between individuals in political activity. This legal equality is served by the rights bearing upon participation in public power, in the legislative process, and the rights intended to eliminate discrimination in criminal law or other discriminatory practices characteristic of feudalism. A legal equality is by no means identical with a real equality, but within the capitalist system it cannot even mean a legal reality; it could not even mean such if the capitalist class would or would have honoured its promises made in statutory provisions, for the enjoyment of these political rights is ultimately determined by material conditions.

It is further well known that the bourgeoisie circumvented even its promises made in constitutions, acts of parliament and other statutes in respect of the equality of rights under the form of citizens' rights. The words of Marx on equality rights included within the 1848 French constitution describing the latter as the "inevitable general staff of the rights of liberty" well characterize the situation. Marx pointed out that all of these rights were declared the unconditional rights of all French citizens (he speaks of the rights of liberty but it is clear from the examples mentioned that he had the rights of equality in mind), but simultaneously marginal notes were appended to these providing thereby their legal limitations in the interests of "the equal rights of others, and public security". "All sections of the constitution" — wrote Marx — "... contain their own contradiction, their own upper and lower houses viz.: liberty in a general phrase and its annihilation in a marginal note".¹²

It has been the point of departure in this paper — and this has been done with a certain amount of generalization — that citizens' rights had become crystallized, under the conditions of bourgeois society, around the categories of liberty and equality. It goes without saying that not the philosophical but "legal" notions of liberty and equality are discussed. The two are of course not standing quite apart but in any case a distinction between them is necessary. Within such a theoretical distinction liberty as an *unconditional* right is placed on the one side which — if such a statement is admissible at all — existed as a natural right prior to the state. On the other side is placed equality of rights which is *not an unconditional* right of the citizen because it may be, as indicated by Marx, restricted by statutory provisions, subject to changes in the political set-up and may be severely limited or completely wiped out. As follows from this, the system of citizens' rights consists in the mutual impact of, and interrelation between, the two types of rights. Viewed from this aspect, the system of citizens' rights laid down in a given bourgeois state may be portrayed as a curve the co-ordinates of which are formed by liberty and equality. It is naturally only a theoretical formula. In fact this duality was not clearly discernible in bourgeois positive law and jurisprudence. In practice the two categories were often defined by resorting to the other — namely liberty by equality and vice-versa — and sometimes also the rights relating to liberty and equality, respectively, have become confused both as regards their system

¹² *Marx — Engels: Selected Works*. Vol. I. pp 236—237.

and the terms used to denote them. This however does not alter the substance of the matter and the nature of the points of departure.

In concepts relating to citizens' rights and the relevant legal provisions the criterion whether these should be approached from the aspect of liberty or equality has become much blurred. Notwithstanding this, the problem of the interrelation between liberty and equality has been raised in the various stages of capitalist development in bourgeois jurisprudence, both as regards the entire legal system and the single citizens' rights. When jurisprudence came to be faced with the contradictory character of liberty and equality: the contradiction between the two concepts, it was because they encountered the actual social contradiction which prevails between liberty and equality in capitalism and which is irreconcilable in a capitalist society. The main line of arguments was that liberty (no doubt the liberty of property and free enterprise were meant) will of necessity lead to inequalities of property and social standing; in other words: the less restricted liberty is, the more restricted equality becomes. On the other hand, even a slightly consistent enforcement of equality by government departments would restrict liberty. From this contradiction inherent in bourgeois states and the capitalist mode of production the conclusion was drawn that equality could not obviously be considered as "absolute": at most there existed a relative, legal equality and even this meant only a theoretical opportunity of exercising certain rights which were, however, limited at the outset by the conditions and requirements of the so-called liberty. There were arguments to the effect that equality could be enforced only in personal and not objective respects, namely: if an individual wants to pursue a trade, he is entitled to equal treatment with other persons as required by the liberty of craftsmanship: but the granting of a license is governed by certain conditions (in the first place by property status, i.e. certain conditions affecting "liberty"). In this juxtaposition the conflict is not between political equality and economic liberty but between the principle of the unrestricted capitalist liberty and the limitation of that liberty on the ground of equality. Depending on the conception of this relationship: either the ideal of the liberal state was placed in the foreground in which liberty was dominant, or such a state was advocated in which liberty (i.e. the unbridled liberty of exploitation) was to be restricted in one way or other (evoking e.g. the protection of the weaker party). In the latter way, it was alleged, social equality could be better secured. As it is obvious, the concept relating to the two stages of development of bourgeois states appear in this context: to conceive liberty as absolute was characteristic of the first stage in the development of bourgeois states, while the emphasis on equality is coupled with "state intervention". Certain limitations of "economic" liberty which means the direct use of the bourgeois machinery of government in the interest of the capitalist economy, it is alleged, are aimed at reaching social equality, but really they are accompanied by an expansion of the scope of authority of the bourgeois imperialist state, — a fact resulting in a far-reaching intervention in political equality, in that sphere of civic rights which comprises the political rights of the citizens. Narrowing down this scope of rights, limits and jeopardizes

bourgeois democracy. The contrasting of liberty and equality in the above manner and the misleading presentation of the mounting contradictions of the capitalist system as if imperialism were limiting liberty in order to secure equality is ultimately nothing, but a false argument used to justify the overall restriction of citizens' rights.

It should be emphasized that the distinction between liberty and equality as explained above has not been clearly and unequivocally adopted in jurisprudence. Legal writings speak many times of liberties when political rights are discussed, and the term political liberties is also used; this however does alter the fact that when the substance of these rights is examined these mean the right of equal participation in government activity, the banning of discrimination on the ground of race, religion or nationality, i.e. the *equal prevention* of discriminations. This category of rights is not characterized by some legal title which could be exercised *against* other citizens, but they do mean that they are founded on the citizens' status, that they shall be accorded to individuals in their capacities as citizens of the state and, in principle, in equal measure at that. These rights are in part of a positive nature, i.e. they permit certain activities, in part of a negative nature involving that no legal discrimination shall be admitted between citizens on certain grounds. This latter aspect furnished opportunities to call these rights liberties, i.e. liberties against the state or even liberties prevailing prior to the existence of state. Thus e.g. they comprise freedom of religion, however, only to the extent that the state does not resort to interference: in other words that it permits the free exercise of all religions in *equal* measure and no state religion is decreed. Still, such a freedom is not a liberty in the sense as if it covered a sphere independent of the state, as if it were the freedom of individuals thought to stand outside of states, as if they stood outside the scope of any legal regulation: The less so because this liberty binds the state not merely to observe a passive conduct: it requires the state to declare equality, the equal absence of discriminations and thus to make it a legal right, and also to take appropriate action to safeguard in some manner the exercise of this right.

When a distinction was made between liberty and equality (or more precisely between liberty rights and equality rights) the problem also arose whether the given rights or liberties required the state to take positive action or to refrain from action. This issue will be dealt with later when the socialist aspects of citizens' rights will be discussed. For the moment its, as it were, opposite reflection should be discussed because this issue was repeatedly raised in bourgeois jurisprudence in the various stages of the evolution of the bourgeois state. Simplified, the problem was formulated as follows: what basic attitude should be concomitant with citizens' rights and what obligations are thereby imposed upon citizens? Are citizens permitted to do everything which is not forbidden by law, i.e. are they "free", or are they within their rights only when explicitly empowered by statutes to act, in "equal measure" with other citizens?

In legal writings the answer was furnished, as a rule, in an *a priori* way: it was claimed as if a general principle could be supposed before the existence of a legal

system from which conclusions could be drawn as to citizens' rights and relations between the basic relations of citizen and state. The answer was either that "everything is, substantially, permitted which is not forbidden by law", or that "everything is forbidden which is not permitted under law". This is, however, not an *a priori* question, or if so it is only such as related to the legal system. It is, in a last analysis, objectively determined by the way the ruling class has organized its own power. The stand adopted in this respect is rooted in the given social system, and in this case, it derives from the essence of the bourgeois state and is subject to changes occurring in a capitalist society. Finally it is also questionable (and the problem is again connected with "liberty" and "equality") — whether a uniform answer can be given in respect of all the categories of civic rights, or should a distinction be made among the various groups? As far as the provisions of positive law are concerned, it should be kept in mind that under the explicit statements contained in the French declaration of 1789 everything was permitted which was not forbidden by law, i.e. such things could not be prevented from being done. This declaration, however, is missing from the Jacobine constitution of 1793, and no such comprehensive statements are to be found in subsequent constitutions for the obvious reason that the problem cannot be settled by such a sweeping statement. There are namely differences between citizens' rights and their categories which cannot be overlooked.

If the problem is viewed again from the aspect of the duality characteristic of the system of civic rights in a bourgeois society it may be stated with a certain generalization that within the sphere meant by "freedom" everything is permitted — the case being about private ownership and free enterprise in a capitalist society — which is not explicitly forbidden by law. This statement applies necessarily to the whole history of the capitalist society even in the periods when the bourgeoisie felt itself compelled to set some restrictions upon the economic liberties. The relative lack of limitations of these rights is inherent in the structure of the capitalist society itself. The situation is quite different as regards the political rights: the bourgeois class could not profess the tenet that everything was permitted which was not forbidden under law. Another principle had to be adopted, namely that everything was "permitted" which was so done under law, but slight differences were encountered in this sphere among various rights. Bourgeois legal philosophy, however, generally applied one or the other tenet to the whole set of citizens' rights. With a certain generalization it might be said that the stand adopted was dependent on the given stage of the capitalist system. In the first stage of the capitalist development it was proclaimed almost as an axiom that everything was permitted which was not forbidden under law; in the imperialist stage of development the tenet was that everything was forbidden which was not explicitly permitted under law. From the political angle these principles discharged the function of general tenets, and embodied the legal policy pursued by the bourgeoisie. At the same time they were used as general principles of law through which citizens' rights could be interpreted in various ways: i.e. restrictively or extensively, as required.

It is clear that the legal thinking of imperialism had to adopt the stand according to which all was not permitted which was not forbidden under law. Furthermore, carrying this train of thoughts to its logical conclusion, attempts have been made to reduce the citizens' rights to a relative importance, and the conclusion was reached that citizens' rights were devoid of freedom and legal title. From this concept only one step had to be taken to the complete denial of citizens' rights as specific rights. The final conclusion must be that citizens' rights are, in the last analysis, nothing but simple political slogans devoid of any legal import. As the formalistic logical arguments supporting this view ran — voiced particularly by legal philosophers in the inter-war period — the so-called liberties (political rights were included within that category) could be considered as real rights because these belonged, by their very nature, to a "sphere exempt from legal regulation". They meant such a field of "liberty" which could not be regulated by the state. And, so runs the argument, that which is outside the sphere of the regulation by the government cannot be termed as a right (or law). The next step is that within this scope citizens are not entitled to rights at all.¹³ But it is also clear that these arguments of logic conceal veritable social grounds: under the conditions of imperialism, the capitalist class no longer accepts the citizens' rights in their entirety, and though they are still laid down in constitutions, their safeguarding is no longer considered an *obligation* incumbent upon the state which may be evoked by the citizens. All these problems raise the issue to what extent can or do citizens' rights mean enforceable legal titles, or put in other words, can citizens' rights be considered, and to what degree, as "subjective" rights?

4. THE SUBJECTIVE RIGHTS

Subjective rights can be appraised only through their opposite, the objective or substantive law, and their function as related to citizens' rights can be defined and appreciated only through these means. Law, as a general concept is the abstractly conceived sum total of rules of conduct, or a single rule of conduct but still abstractly conceived. In legal relationships law (i.e. the abstract rule of conduct) becomes concrete, i.e. it is applied to a particular person or persons. In a given legal relationship persons as the subject of these relationships are entitled to certain rights and are bound by certain obligations. The legal titles manifested in legal relationships, connected with the persons concerned are termed, according to the general usage, subjective rights.¹⁴

Accordingly, a subjective right is the reflection exerted by the law upon an individual legal relationship, the realization of law as viewed from an individual

¹³ This argument may be found in a particularly clear form in H. Kelsen's works, especially among others: *Allgemeine Staatslehre*. Berlin, 1925, p. 154, and *The Outlines of the Theory of State*, Szeged 1927, p. 48 (in Hung.).

¹⁴ See: *Peschka*, V., *A jogviszonyelmélet alapvető kérdései* (The Basic Problems of the Theory of Legal Relationships). Budapest, 1960, p. 148 et seq.

angle, or right subjectively conceived. In this sense a right constitutes a part of the law. It is not without importance what rights are secured under a legal system for individuals. When individual rights are claimed, it amounts to saying that the given legal system guarantees certain rights for the subjects-at-law. Consequently, individual rights have their place within the legal system, but they mean only one aspect of the realization of law: another aspect is constituted by the legal obligations incumbent upon individuals. The latter are also the effects of the law as reflected in individual legal relationships. Individual rights accordingly — together with legal obligations — formally indicate the effectiveness of the legal system, since legal rules materialize in legal relationships through rights and obligations. Their substantive meaning lies in the fact that law must accord certain rights to individuals and these legal titles (as well as the corresponding obligations), and their nature and degree, are determined by the economic foundations of the society in question.

Although the above constituents may be encountered also in the bourgeois theory of subjective rights, this jurisprudence was not foremost concerned with it and no efforts were made to explain the materialization of law, the mechanism of its effect upon individuals and the interrelation between rights and obligations. The slogan of individual rights — at least in the first period of bourgeois development — had the social function to make appear certain rights — and these were the so-called human rights — as ideal, to place these outside the sphere of the legal system, or to make appear as if such rights could determine the very legal system. When the complicated legal arguments are simplified it might be said that the theory of subjective rights was elaborated by the bourgeoisie with a view to place freedom (in the first place the freedom of private property), outside the sphere of the legal system; to put private ownership in its legal philosophy ahead of positive law, as a subjective right; claiming for it a determining role for the entire bourgeois legal system. Consequently, subjective rights came to be centred around the right of private ownership, and bourgeois jurisprudence construed this right, (as well as other rights), as being outside objective law and not as a result of its operation. This fact, such a function of subjective rights was professed in a very open way by several representatives of imperialist jurisprudence while — in keeping with the new requirements — the whole theory of subjective rights was rejected and the recognition of their legal standing was refused. Kelsen is right when, criticizing the bourgeois theory of subjective rights, he states that the concept of subjective rights separated from objective law and existing independently thereof has a specific ideological role in a bourgeois society: "The notion has to be maintained that the subjective right which amounts to saying private ownership constitutes a transcendent category as against objective law puts an insurmountable obstacle in the way of the substantive evolution of the legal order." He goes on to say that such an exemption of private ownership is the more necessary the more the concept is gaining ground that the legal system is man-made, it is not based on eternal divine will, reason, or nature. Under such circumstances it has to be proved that private ownership — being independent

of objective law — is even more “legal” than the legal system itself. In other words private ownership must be protected against its eventual elimination by the legal system.¹⁵ These critical remarks are substantially true; but the social function of these reflections is no less of an “ideological nature” than that of the theory of individual rights, because in the last analysis they serve to get rid of subjective and thus of citizens’ rights, and to furnish theoretical foundations for the imperialist state to justify its arbitrary actions.

When individual, subjective rights were raised above objective law or even opposed to it, this was originally an ideological means to exempt from the scope of citizens’ rights the so-called human rights and to present the freedom of private ownership and contracting as an undisputable right existing before the objective law. According to this concept, subjective rights did not mean the operation of the positive law as appearing in individual legal relationships; they were considered as not subjected to positive law and not covered by it. Although subjective rights were in fact a category of citizens’ rights determined in the last analysis by the given economic foundations, making a part of the politico-legal section of the superstructure and safeguarded by the positive law — this relation appeared in the theory of individual rights just in reverse, was turned upside down. Also in this context, as in respect of human rights, the appearance was raised as if a part of law or the whole legal system were determined by a “natural” law, existing prior to the legal system. In fact the case was that legal ideology attributed a distinct importance to private ownership which in the last analysis determined law itself, which eventually asserted itself within the superstructure with a special significance, which was considered as “sacred” but as a legal institution was comprised within the scope of the superstructure together with other rights. But the coupling of individual rights with private ownership was not as equivocally borne out in bourgeois legal philosophy; legal writers treated individual rights and pointed out their significance without revealing the roots of individual rights and without examining the function of these rights. Still, this issue came, indirectly, to the foreground when attempts were made in bourgeois legal writings at a more refined and thorough-going analysis of these rights, and to make a distinction between substantive rights under private law and those under public law. These attempts were, however, made in that stage of the bourgeois legal evolution when the fight against the remnants of feudalism had already lost its significance and the contradictions inherent in the capitalist system of society were becoming apparent. Under such conditions of society, by the second half of the 19th century the proclaiming of human rights had become less pathetic and the social purport of individual rights was gradually wearing off. The grand ideas of human rights voiced in politics and law could not avoid their fate when social and legal philosophers lost interest in the majority of these, and when lawyers engaged in the analysis of positive law started to deal with them who, instead of looking at the ideological roots and origins, examined and classified the patterns as these had appeared in

¹⁵ *Kelsen, H., Reine Rechtslehre. Leipzig und Wien, 1934, pp 43 — 44.*

the provisions of positive law. The social demand for human rights was replaced by the classification of these rights as proclaimed in the respective constitutions, and concomitant with that the study of individual rights was lowered into the earthly world of positive law. Less emphasis was laid on the human rights as standing apart and above objective law; more attention was devoted to their expression in the system of positive law. In the course of this positivist study the necessity of making categories in the legal dogmatics and correspondingly the distinction to be made between subjective public respectively private rights became the main concern.

Although the elaboration of the notion of subjective rights had been, at the outset, most closely related with the citizens' rights, the positivist studies and the differentiation made between individual rights as rights under public and private law resulted in diluting these rights, or to put it in other words, the scope of operation of individual rights was more widely demarcated than that of human and citizens' rights. Positivist legal writers classified within the category of subjective rights under public and private law such rights which were secondary as compared to citizens' rights. Under this concept the rights of man and citizen were considered as forming only a part of the rights of individual under public and private law. To the latter were added rights which were laid down specifically in the non-constitutional provisions and the internal system of public or private law. This fact in itself contributed to relegating into the background the importance of citizens' rights because in legal writings on positive law these were replaced by the more extensive category of subjective rights. Although through this treatment subjective rights became somewhat independent of citizens' rights, writings on public or private law concerned with subjective rights could not avoid making a certain hierarchical distinction between subjective rights under public respectively under private law as required in the bourgeois system of citizens' rights. It was held that the subjective rights under private law, (i.e. the category of rights which included the right of private ownership and free contracting) come first in importance, before the subjective rights secured under public law, in other words, the rights essentially of political nature. The rights secured under public law appeared in the literature only as the transpositions, reflections of private law rights, always certain reservations attaching to them and no equal standing granted to them as compared to private law rights.¹⁶ It should not be left out of consideration either that the theoretical recognition of public law rights was evolving through a gradual process, and was the indirect result of those efforts which were aimed in the positivist legal writings at discovering an interdependence between private and public law, and at construing an identical level between these

¹⁶ *Jellinek, G.* who dealt with the theory of subjective public rights in a relatively extensive way and was an outspoken representative of the public-law trend, made a definite distinction between subjective public and private rights with preference for the latter. He held that subjective public rights were the expression only of a "Wollenkönnen", while individual private rights of a "Wollendürfen". See: *Jellinek, G.*, *System der subjektiven öffentlichen Rechte*. 2nd ed. Tübingen, 1905, p. 57.

two branches of law. This trend of equalization was bound to fail because the social substance, namely the unconditional primacy of the private-law subjective rights, grouped around the freedom of private ownership, was running counter to it.

The evolution of the legal formulation of individual rights and of the concepts thereon continued to follow the historical path trodden by the capitalist society. When capitalism has reached the stage of imperialism the fine but precarious distinction made in bourgeois positivist legal writings between private-law subjective rights on the one hand and public-law rights on the other, has more or less disappeared, to be replaced by a complete or partial rejection of subjective rights. If at the beginning the private-law subjective rights had a dominant position over the rudimentary concept of public-law rights, and if subsequently a kind of balance was struck between private-law and public-law rights — the private-law rights retaining a certain primacy —, in the end the concept prevailed which necessarily rejected the unconditional nature of citizens' political rights and their alleged standing apart and above objective law, because not to do so would have been at variance with the interests of the capitalist class. After the public-law subjective rights had been rejected the entire structure of subjective rights as distinct from objective law had also to be surrendered. Bourgeois jurisprudence had to arrive at the conclusion — ultimately also from the changed conditions of society — that rights or legal titles are not necessarily constituents of objective law and the latter's only criterion is legal obligation and not legal title: all in all subjective rights, if they exist at all, are mere reflections of objective law. The conclusion crystallized in bourgeois jurisprudence already prior to the second world war but which may be regarded as the last step was, in regard of subjective rights, not that these should be "put in their place" i.e. that these be considered as actual reflections of positive law with an objectively determined substance but that these rights must be rejected in their entirety. As a matter of course the rejection of subjective rights was not tantamount to rejecting private ownership. The reasons for this negative attitude should be looked for in the political conditions prevailing in the imperialist stage, in the crisis of the capitalist system which involved a development towards transforming the political structure of the bourgeois state and changing its political and legal methods. In such a state of affairs any consideration for the citizens' rights even seemingly raising these above the political power would be detrimental for the monopoly capital. It is common knowledge that monopoly capital was compelled to give up those liberal bourgeois principles which professed a non-intervention in private rights, and was increasingly bound to resort directly to government power in order to uphold capitalist exploitation. Accordingly, in this concept to make subjective private rights appear as basic principles standing above the legal system and to proclaim these as such, would be undesirable.

5. CITIZENS' DUTIES

If the underlying thought of bourgeois theories on citizens' rights is consistently followed to its conclusions and in this course the individual subjective rights as the approach of citizens' rights from a new aspect are arrived at, it should be clear that in such an atmosphere where the real conditions have become distorted there could be no place for the opposite of citizens' rights, namely citizens' duties. When citizens' rights or within this category the human rights are considered to be outside the legal system, which go ahead of, and determine, the latter: the corresponding duties of citizens ought equally to be placed in a sphere outside the legal system. However, given such a bourgeois theory in jurisprudence, no such role could be allotted to citizens' or human duties as if they had precedence over the legal system. Conceived in such general terms these could not mean, on this level, anything substantial either as regards capitalist ownership, its safeguarding, or the rejection of the feudal system. Citizens' duties could not appear outside the so-called objective law as some individual duties, they had to be retained in the objective law. Citizens' duties being devoid of any outstanding significance within the bourgeois philosophy, the thinkers in the age of enlightenment and bourgeois legal philosophers were at a loss how to deal with them: at least they were unable to consider these on a level identical with citizens' rights. The philosophical and legal-theoretical concept and the corresponding constitutional provisions were in harmony, in this context as well, with the given economic and social conditions. This harmony is manifest when it is taken into account that citizens' duties were not elaborated by bourgeois theoreticians and they were, as a rule, not enacted in constitutions.

Indeed, citizens' duties were not susceptible of being placed in the other scale of the balance with as much weight as citizens' rights. To "liberty" (meaning the particular rights expressing the substance of the capitalist society) what else could be juxtaposed but the restriction of liberty: that it must not encroach upon the freedom of others. This however did not and could not appear as the citizens' duty but merely as a "natural" limitation of human rights, not as a command prescribing a certain conduct but only defining certain limits to be observed. Against the feudal system the emphasis was not on the duties incumbent upon the capitalist in the process of capitalist production, but on pointing out that property should be free from all restrictions inherent in the feudal system. As far as the other branch of citizens' rights, private law, is concerned there were opportunities to define the citizens' obligations, and — as will be seen later — there were attempts made in that direction. Both theory and codification practice went further in this field. But it became finally clear that the bourgeois class had not much substantial to say: as there was no need to define the duties of "man", those of the "citizen" appeared in an abortive form also.

Without going into a detailed analysis of bourgeois constitutions the general statement may be made that these contain but scanty provisions on citizens' duties. The French declaration of 1789 points out in its preamble that the declara-

tion serves to constantly remind all members of the society of their rights and duties but no mention is made of the duties in any of its 17 articles. Nine articles of the French constitution of 1795 are on duties of citizens but these are couched in very generalized terms, like: "What ye do not desire for yourselves ye shalt not do to others". Or: "nobody can be a good citizen unless he is a benevolent child or father, brother or spouse." As duties in the real sense of the word are mentioned merely the observance of laws and the defence of the country. The 1848 French constitution is somewhat more instructive insofar that it clearly lists the duties of "citizens", the duties which devolve from the bonds of citizenship but when it tries to give a detailed formulation, only rights are included providing that the Republic recognizes the rights and duties which are above and have precedence over positive law; but actually only rights are mentioned within this scope, namely those which come under the category of the so-called "human" rights. As far as the duties of the "citizen" are concerned the reference is found that citizens owe duties towards the Republic and the Republic owes duties towards them. When the duties are listed in detail in the preamble it is provided that citizens shall be devoted to their country, shall serve the Republic; they shall, in proportion to their financial position, share in bearing the burdens of the state, they shall, through their work, secure the conditions of living for the present and future; they shall contribute to the public weal, they shall assist each other and they shall observe those moral laws and written statutes which govern society, family and personalities. As is to be seen the duties are conceived, in principle, as owing to the state but these shade off into a kind of "general human" duties which, however, do not correspond to the so-called human rights but are mere commonplaces.

Starting from the above considerations certain bourgeois writers doubted the legal nature of such duties asking the question, whether they are not just pious wishes? Having in mind this nature of duties laid down in bourgeois constitutions, legal writings — mainly those of a positivist trend — raised the matter of principle whether citizens' duties should be considered as legal obligations, or moral obligations, or both. As a reflection of citizens' rights the idea of individual duties was also raised but a dividing line was always drawn within this scope between private and public duties. It is understandable that while in respect of subjective rights the significance of those coming under private law were enhanced, in regard to the so-called subjective duties those of a public-law nature were placed in the foreground. When theory has reached the point at which the substance of objective law came to be considered as consisting of obligations, the necessity and even the opportunity to retain citizens' duties as a distinct category has become a foregone conclusion.¹⁷ This ill-assorted nature of citizens' rights and duties as it appear-

¹⁷ E.g. the so-called Weimar constitution of Germany, 1919 provided in a separate chapter for the "fundamental rights and duties of the Germans" without, however, giving an effective definition of citizens' duties. Even if some bourgeois constitutions adopted after the Second World War have something more to say, this does not change the fact that *theoretically* the problem of citizens' duties has continued to come to a deadlock as outlined in the above.

ed in bourgeois jurisprudence: the elaborate system of tenets in respect of rights which prevailed within a relatively wide scope, and the simultaneous neglect of duties, cannot be regarded — as already pointed out — a mere incidental phenomenon and certainly cannot be attributed to deficiencies in the theory or the omission of theoreticians. The fact that the thinkers in the age of enlightenment evolved ideas on state, society and the citizens which resulted in the sphere of law, in respect of citizens' rights, in the theoretical stand and constitutional provisions described in the aforesaid, was obviously a consequence inherent in the nature of the capitalist society. These social conditions shaped, in the last analysis, the contract theory which was presented by the philosophers of the age of enlightenment as the foundation of the state, and from which citizens' rights were deduced in a speculative way. The hypothesis of the social contract was not used by these philosophers in order to reveal the relationship between state and citizen as the system of rights and duties, but merely to justify the existence of certain rights alleged to be inalienable and independent of the state. These rights, in turn, embodied the very substance of the capitalist mode of production in the shape of eternal human rights, and in such a structure which laid emphasis not on the duties but on the rights. Theoretically this concept, naive as it appears in our age, might have been susceptible of creating a system of the duties of "man", but the capitalist class was in no need of it and in any case such a concept would have upset the theoretical structure. The evolution of society, the bourgeois revolutions required that the more or less consistent thinkers of the bourgeois class lay emphasis on getting rid of feudal tyranny, also in respect of the production process and the political superstructure, and to help erect through the bourgeois revolution a state which safeguards political rights for the bourgeois class, and will ultimately protect the so-called human rights. Furthermore while it was necessary to declare the emerging new bourgeois state as one which grants freedom to individuals freed from the yoke of feudalism, and accordingly human and citizens' rights had to be treated, in principle, as everyone's due: the capitalist class was reluctant to proclaim such overall duties by which, if only in principle, it would have been bound and which would have restricted its economic liberty and political power. Consequently instead of generally proclaiming the citizens' duties, freedom and equality of rights for all were declared constitutional rights, with the supplementary consideration that adequate government actions and legal provisions should be resorted to, in order to secure the privileged position of the capitalist class and the more or less open limitation of that freedom and equality of rights in respect of the exploited and oppressed. All this proves that the absence of an elaborate system of citizens' duties cannot be regarded as a deficiency of the theory, but it was a natural consequence of the capitalist production relations and class-structure. This structure was reflected by the political and legal superstructure, by using constitutional and ideological devices meant also to conceal the actual class character of this superstructure, and within that, of citizens' rights, or even to present a social semblance which was at variance with the substance and real function thereof.

This specific and one-sided nature of the bourgeois regulation of citizens' rights was clearly discovered by Marxism. Marx and Engels when setting the objectives for the fight waged by the working-class had in mind a society and state in which, among other things, the unity of rights and duties would be accomplished. Engels, when subjecting to criticism the Erfurt Draft Program of 1891, objected to it for the very reason that it contained statements on equal rights but had remained silent on duties. Engels' reflections in this context were: "Instead of 'everyone shall have equal rights' I would suggest: 'everyone shall have equal rights and duties': *Equal duties* are for us important additions to the bourgeois democratic *equal rights* and this demand will thus be deprived of its specifically bourgeois democratic meaning."¹⁸ It should be pointed out that these remarks of Engels refer to the wording of the theoretical section of the draft program which assumed this final shape after Engels suggested his additions and amendments: "The German Social Democratic Party . . . is fighting not for new class privileges but for the abolition of class rule, of the classes themselves and for everyone to enjoy equal rights and equal duties irrespective of birth or sex . . ."¹⁹ In this way it is laid down in an unequivocal manner in the program that the equality of rights and duties, i.e. the unity of citizens' rights and duties cannot be attained except by the victory of the working-class, under the conditions of socialist society. It is not an objective or program of the working-class which could be attained under capitalism, but a principle characteristic of the socialist society and *only* of such a society. This idea is expressed in the "Statutes of Organization of the International Federation of Labour" which were drawn up by Marx and adopted by the Federation's London conference in 1871. Right in its first paragraph it is included: "Taking into account that the emancipation of labour must be fought out by the working-class itself and that the fight for the emancipation of the working-class is waged not for class privileges and monopolies but for *equal rights and duties*, for the abolition of all class rules, etc."²⁰ As it is clear from the above the demand of the revolutionary working-class for equal rights and equal duties was coupled with the emancipation of the workers. The same idea is expressed in the statement of principal importance contained in the Statutes that "the Federation recognizes that *there shall be no rights without duties and no duties without rights*." The Statutes drawn up by Marx laid down in this way the ultimate objective of the fight waged by the working-class also as regards citizens' rights and duties, making use also of these by raising equal duties to the level of equal rights. As it is to be seen from the above conclusions the basic theoretical tenet of the socialist regulation of citizens' rights — in harmony with the attainments of the working-class and the new socialist socio-economic conditions — is based on the inseparable unity of the equality of citizens' rights and duties.

¹⁸ *Engels, The Critique of the Erfurt Draft Program*, Budapest, 1954, pp 17—18 (in Hung.).

¹⁹ *Op. cit.* pp 54—55.

²⁰ *Marx—Engels, Selected Works*. Vol. I. pp 363—364. (Italics are mine.)

II. THE SOCIALIST THEORY OF CITIZENS' RIGHTS AND DUTIES

1. THE NATURE OF CITIZENS' RIGHTS AND DUTIES IN THE SOCIALIST STATE

The foundations of the socialist theory of citizens' rights and duties are contained, as was seen, in the works of Marx and Engels. These tenets and conclusions were elaborated and further evolved in Lenin's doctrine on the socialist state and constitution. These theoretical conclusions concern on the one hand the criticism of the bourgeois concepts of citizens' rights and duties, revealing the reasons of the bourgeois constitutional and other legal regulation, on the other hand bear upon the stand adopted by the working-class in connection with citizens' rights and duties which, as institutions, are translated into a social and legal reality exclusively in socialist states. Thus, the relevant conclusions arrived at by the classics of Marxism—Leninism are in part in the nature of criticism, in part summarize the socialist program of how to enforce these rights and duties. The socialist constitutions are founded on this true, undistorted theory of citizens' rights and duties, not intending to hide anything "on ideological grounds". Thus, they safeguard the actual implementation of these rights and duties, and ensure that the theoretical teachings of classics become living reality.

The young Marx, in his work cited above, closed his criticism of the classical bourgeois concept of the rights of man and citizen, and the distinction made between the two with the following words: "Only when the real individual man will have re-embodied in itself the abstract citizen and when, as an individual man will have *become a being of the human race* in his empirical life, in his individual work, under his individual conditions, and only when man will have recognized and will have organized his own *force propre as social forces* not separating thereby in himself the social force in the shape of *political force*, shall the emancipation of man be a living reality."²¹ The young Marx, growing out of the limitations of Hegel's philosophy, formulated in this sentence his final conclusion in conjunction with the basic problem of his paper, the religious emancipation of men: when examining the nature of the freedom of religion and conscience as a citizens' right he arrived at the conclusion which expresses the very foundations of Marxism, namely that this right, as well as other rights can become real and complete, and the political emancipation demanded by the bourgeois society can become a veritable emancipation of men, only when human productive activity will have ceased to be based on the selfish man, the man conceived as the idealized subject of private property but on the social man, man as a community being — in other

²¹ Marx, On the Jewish Question. Vol. I, p. 371. Marx cites Rousseau in this paper who when defining the "abstraction of the political man" (Marx) uses the notion of the "proper forces" ("forces propres") to denote the "natural forces" of man. A juxtaposition is made between this force and the force acquired by man through the political association which he calls "a force alien to man". See: Rousseau, The Social Contract. Book II. Chapter VII. op. cit. pp 140—141 (in Hung.).

words when the economic foundations will have been basically changed, — when the private ownership of the means of production will have been replaced by social ownership, — when communist society will have been attained. In the communist society man will be also in his productive activity a “citizen”, a self-conscious community being, and the necessity of upholding the duality of man and citizen, the separation between man’s productive and political activity will be completely abolished. To put it in other words: the complete attainment of the rights of man requires socio-economic conditions in which the political power no longer needs to construe these rights (and the corresponding duties) as enacted, enforced and safeguarded rules. Accordingly the actual implementation of these rights and duties leads — in keeping with the withering away of state and law — also to their disappearance as political and legal institutions. What Lenin said about democracy’s fate which comprises also the fate of these rights (in respect of the withering away of state) applies also to citizens’ rights: “The fuller democracy is the closer is the time when it will prove to be unnecessary.”²²

This stage of human history, the real emancipation of man and the ceasing of the necessity of his rights being proclaimed and enforced by the state, is preceded by the age of the revolutionary transformation of capitalism into communism which is called *socialism*. Under socialism the citizens’ rights and duties are already appearing and are implemented in a new manner, different from the capitalist society but *still* retain the feature that these rights and duties must be laid down and safeguarded by the socialist state *qua* state and political rights and duties.

The new pattern of citizens’ rights and duties in the socialist state is determined, in the last analysis, by the cessation of the contradiction between the social character of production and the private ownership of the means of production, the former having been brought into harmony with the social ownership of the means of production. The socialist state has an essential, distinctive feature as against all states previously existing that, relying on the social or communal ownership of the bulk of the means of production, it organizes socialist economy, develops the economic foundations of socialism and subsequently communism. Accordingly in the socialist state which is the political organization of the working people, the overwhelming majority of the population, then of the whole society owns the greater part of the people’s property, is in charge of organizing and controlling national economy, representing thereby also the economic power of the working population. This novel situation requires new governmental methods of exercising political and economic power in the direction of society. But also a new expression of this situation by the state is required through, among other things, the new constitutional regulation of the relations between the socialist state and its citizens, by settling in a novel way the institution of citizens’ rights and duties.

This new-type settlement, the new socialist expression of the new social relationships through the medium of citizens’ rights and duties is characterized, as against the bourgeois regulation, by an absence of any mistified image. Its

²² *Lenin*; State and Revolution. See: Works: Vol. 25. p. 509 (in Hung.).

principal feature is that it does not camouflage the real social and economic relationships, and concomitant with it the relationships between state and citizen; it does not express them in a concealed, untrue, indirect manner i.e. not in an "ideological" manner in which the term "ideological" means a hidden and oblique element. The socialist system of citizens' rights and duties is faced with the task of giving expression to the new structure of the socialist society in these rights and duties, to the evolving new relationships between the socialist state and its citizens, to revealing the substantially new content of formerly known rights, to laying down these as veritable rights under socialist conditions, as a social reality, and to introducing new rights which cannot be conceived of in a capitalist society. Parallel with this process citizens' duties have to be laid down, almost for the first time, in their entirety, in a way that these are coupled with citizens' rights, accord with these and lose their former nature when these meant no more than moral wishes.

It follows from the aforesaid that the manner of constitutional regulation, *proclamation* of citizens' rights and duties assumes new forms and new, changed functions. In the first place, as will be seen in detail in the subsequent pages, the dual nature of citizens' rights prevailing under bourgeois conditions, the division between the rights of man and citizen comes to an end. The member of the productive society and political society appears consistently and uniformly as the citizen, a subject of these rights in its relation to the state, in a way which comprises his relationships to other citizens and the common social bonds with them. Simultaneously, in socialism there ceases the function of the declaration of citizens' rights meant to reveal the structure of the given social system (in a specific concealed manner), and within this the connection between the production relations and the political-legal superstructure based thereon. In other words no such separate declaration is needed for laying down the relations of the individual with state and society — as if suggesting a basic contract and assuming a society existing prior to the state, in an almost preconstitutional document. This function (the expression of the given social system, of the socialist production relations and the political order in a politico-legal document) is discharged by the socialist constitution itself which fixes the character of the economic foundations of socialist society and the corresponding political system without presenting the former, in an indirect way, as the rights of "man", or the latter as the rights of "citizen". This results among other things, in an augmentation of the topics included within the socialist constitutions, which means that basic questions relating to society and state are regulated in these constitutions on which bourgeois constitutions had to remain silent. Finally, in consequence of all these, the place and regulation of citizens' rights in the constitutions (and duties) undergoes changes. The question whether citizens' rights and duties should be provided for in the preamble in a socialist constitution, cannot be reasonably raised because the proclamation of citizens' rights does not involve the indirect function of embodying the basic principles of the social system. Therefore there is no reason why it should precede the constitution. The constitutional proclamation of

citizens' rights and duties in socialist constitutions serves the only purpose to define the scope of these rights and duties and lay down their safeguards. Thus it constitutes a part, a chapter, in socialist constitutions, because the relation between citizens and state is a fundamental feature of the socialist state and socialist society. Citizens' rights and duties in socialist constitutions mean, thus, such rights and duties which are not only proclaimed in these constitutions but the terms and manner of their implementation are also provided for.

As has been pointed out, as a result of the socialist revolution, the radical changes ensuing in production relations and the corresponding class relations put an end to the dual conception of the rights of man and citizen. In the socialist society the producing individual, the worker, the working man is in fact a co-owner of the means of production through the medium of his political organism, the state. He has a share in the social property, due to the fact that political power has come into the hands of the working-class, the working people. As a result the participation of the working individuals in the production process becomes tied up, through the medium of the state, with sharing in the exercise of political power: economic relationships between citizens and state become *citizens'* relations. The position occupied by members of the socialist society in the production process and national economy are expressed as civic rights, as economic, social and cultural rights in socialist constitutions, and together with the corresponding duties their implementation is safeguarded as such. Accordingly also under socialist conditions a classification can and should be made in respect of citizens' rights and duties, which can be divided into social, economic and cultural rights on the one hand and political rights on the other. This distinction is however rooted not in some dual capacity of the members of society as "men" and "citizens"; both categories of rights are based on citizens' relations and their position in the production process. The duality of citizens' rights as prevailing in a bourgeois society, the separation between the rights of man and citizen was the reflection of the contradiction existing between politics and economics whereby members of the society appeared on the one hand as "men" — potential capitalist —, on the other hand as citizens, i.e. as members of the politically organized society. The socialist system of citizens' rights expresses (in addition to the internal grouping of these rights) the harmony between politics and economy in the socialist society where the citizen is the subject both of economic and political rights.

In the socialist state the scope of citizens' rights is extended, their list is supplemented by new rights. Together with it the constitutional expression of citizens' rights is changed and the place of certain rights in the constitution is also altered. Such a change may be discovered in two respects connected with the production process; the first relates to a human right which does not figure in socialist constitutions, the second, to a right which first finds expression in socialist constitutions. As has been pointed out several times the most important among human rights in the bourgeois society, we may say the basic right of "man" is the right to the private ownership of the means of production. In the socialist state the means of production are owned by the society. This fact cannot be expressed as a "human"

right, but even if described as the citizens' rights, as a right to the social ownership of the means of production it would be, in this form, unnecessary and not very revealing. In socialist constitutions the social ownership of the means of production is not defined as a citizens' right; the economic system and the social ownership of the means of production is regulated in separate chapters in a clear-cut way. Whereas this fact constitutes the very *foundation* of the state which underlies the entire system of citizens' rights and the safeguards thereof, yet it cannot be conceived as the citizens' right (though it is also clear that all citizens benefit from this system of ownership). This involves, among other things, the conclusion that citizens' rights and interests should be looked for in socialist constitutions *not only* within the scope of citizens' rights strictly taken because these are contained — even if not termed as citizens' rights — indirectly in other parts of the constitutions as well. This applies not only to social ownership but also to the right to work and suffrage. If we failed to consider this specific feature of these constructions, it would appear that in socialist constitutions only the duty to preserve social property is regulated (in this respect) for only this is mentioned in the chapter dealing with citizens' rights and duties. This is however not the case; in socialist constitutions the benefits devolving upon citizens from social ownership are regulated in other contexts, because the social safeguards of the protection of social property and the benefits devolving upon the citizens therefrom may best be laid down in the chapter on the economic system and political foundations of the socialist society. Therefore when citizens' rights and duties are analysed, always the entirety of a socialist constitution should be taken into account. Only such a comprehensive examination is capable of throwing light upon the citizens' position in socialist states, only such a method will reveal all the aspects of the relationship between citizen and state.

The right to work occupies a place somewhat similar to social ownership in socialist constitutions. Work as the foundation of the social system in socialist states usually appears in their constitutions in the chapter on the social system, sometimes both as a right and duty of citizens. The import of such a constitutional provision lies not in its constituting a citizens' right and duty, but in defining the role of work in the socialist system of society, when it lays down that the commodities shall be distributed in accordance with the work done. This provision would obviously be out of place within the scope of citizens' rights and duties, but must be included among the provisions on the substance of the socialist system, the socialist production relations and the foundations of social relationships. Citizens' rights should comprise such economic and social rights which devolve, as a consequence of the operation of the socialist economic system, *directly* upon citizens, which are inherent in the socialist system of economy and which (together with the corresponding duties) can be implemented only on the basis of socialist production relations.

The statement that certain basic economic and social rights are possible and can be implemented only in a socialist society, is seemingly contradicted by some facts of history. It is common knowledge, e.g. that the right to work has been

one of the demands of the working-class also under capitalist conditions. It is also a fact that certain economic and social rights are provided for in some modern bourgeois constitutions (whether they are enforced is another matter). It is also known that economic, social and cultural rights were the topic of efforts to regulate citizens' rights on an international scale. All these indicate the necessity of a close examination of the problem. As to the right to work, the most important among the so-called economic rights, this has constituted undoubtedly one of the demands raised by the working-class also under the bourgeois régimes. But the leaders of the working-class movement had no illusions about the outcome of raising this demand in bourgeois societies. Marx and Engels had particularly no illusions in this matter. If the "awkward formula" of the right to work as a demand of the working-class was raised in France in 1848, it was nothing more than "the first summing up of the revolutionary demands of the working-class". In its background, there stood — as put by Marx — "power over capital, in its background in turn, the expropriation of the means of production, their subjection to the federated working-class, in all, doing away with wage labour, capital and their interrelation."²³ Engels wrote in 1884 that the right to work had been "invented" by Fourier and the workers of Paris, not very well versed in theory let it be thrust upon themselves . . . "Such a right can be implemented by capitalist societies at most within their own limitation, which means the so-called national workshops, really workhouses, starvation- and stroke-controlled workers' settlements". If the demand for the right to work — Engels goes on — indirectly includes the demand of overthrowing capitalism, it must be regarded as a "cowardly setback" as compared to the contemporary state of the working-class movement because this glossed for the workers the objectives to be attained and the conditions required to accomplish these objectives.²⁴ It is clear from the above that Marx and Engels were by no means enthusiastic about raising the right to work in bourgeois societies as a distinct demand of the working class. But this is not tantamount to denying the significance of the right to work in socialist societies, where this right has been lent a real substance and has materialized just because capitalism had been overthrown. But this radical social change has involved, in a particular way, a change in the whole nature of the right to work: its substance and practical significance should not be looked for in the demand of citizens for employment and the duty incumbent upon the socialist states to provide jobs. In socialist societies unemployment has come to an end. As socialism is approaching the higher stage of communist society, work is becoming — in Marx's words — "the principal necessity of living". Therefore, under socialist conditions, the proclamation of the right to work as one of the citizens' rights does not simply

²³ *Marx*, *Selected Works*, *Class Struggles in France*. Vol. I. pp 148—149. Marx said that the right to work "does not make sense in the bourgeois meaning" and added that this right which had been included in the first French draft constitution of 1848 was subsequently changed to the right of village communities.

²⁴ *Engels*, *Letter of May 23, 1884 to E. Bernstein*. *Marx — Engels: Selected Letters*, Budapest, 1950. p. 441, (in Hung.).

mean that citizens are free to undertake jobs and the state is obliged to provide these, but in the first place it means the creation of appropriate working conditions, wages in proportion to the quantity and quality of the work done, opportunities to acquire a higher training, to enable the workers to do a more qualified work, it means the necessary attention be paid to protecting the health and securing the rest of the working man. It may be deduced from the above that this road is leading to a close interrelation between the right to work and social, cultural rights, it is merging into the latter.

As a matter of course, the working-class fights also under the conditions of the bourgeois society for obtaining certain rights connected with work: for improved labour conditions, higher wages, social rights, social insurance, etc., but these demands should not be mistaken for the workers' revolutionary objectives. It is clear that the right to work in the real meaning of the word, as it is implemented in socialist societies, cannot be enforced — just in its basic features — in a capitalist society. For the substance of the latter involves the oppression of the working-class, the restriction upon its rights and the unavoidable permanent unemployment. The fact that certain bourgeois constitutions declare the right to work results from the fight of the working-class directed at improved labour conditions. It may also be a concession made by the bourgeois class with a view to pretend the constitutional safeguarding of the right to work. The momentous fact should not be left out of consideration at this juncture that in 1917 the first socialist state of the world was founded, which not only enacted the economic, social and cultural rights but implemented them. The relevant provisions of the Soviet constitution and later of the people's democratic states have had an impact, through the struggles of the revolutionary working-class, upon the bourgeois constitutions adopted after the first and the second world wars. Finally, besides the above-mentioned facts, due in the first place to the relentless fight waged by the Soviet Union, demands have been raised that all states be required to safeguard certain basic economic, social and cultural rights and these be included in international agreements. This was and is of particular importance for the then colonies, present-day dependencies and developing countries. As it is known, imperialist states are reluctant to undertake obligations in international instruments as to securing economic, social and cultural rights. But the idea that all states comply with certain economic, social and cultural, labour requirements and that these be laid down as the citizens' rights has become rooted in international life. But it is also clear that these rights are not identical, as to their content, with the rights of citizens implemented in socialist states though they are frequently denoted with the same term.

Reverting to the substance of the socialist theory of citizens' rights another possible counterargument should be examined. It is claimed by the socialist theory that citizens' rights are attaching to state action, i.e. rights which are laid down by the state; it is further claimed that there is no "human right" element in them which could be inferred from natural law, existing prior to the state. Now, if the socialist system of citizens' rights is conceived in this way, it might be suggested that this may lead to arbitrary actions by the state in respect of

citizens' rights, to the unrestricted decisions of a socialist state as to how and to what extent should the limits of these rights be defined. To put it in other words: since the citizens' rights, after all, express the essential aspects of the relation between state and citizen, is it feasible that the purport of this relation be laid down unilaterally only by one of the subjects of this relation, the state? This issue has been constantly dealt with in the bourgeois literature and the negative answer was put forward as one of the arguments for adopting citizens' rights in their entirety, or in their majority, as human rights which had been existing prior to states and derive their obligatory force from this pre-existence. Starting from this ground some pre-state, superior legal maxims were looked for which were said to ultimately determine the state's activity in proclaiming citizens' rights, and even to define their content. This suggestion even if examined from the angle of formal logic is obviously self-contradictory, because a thing, alleged to be superior to state, is considered a right which is in fact not a right but a factor claimed to be determining the former. The explanation inevitably led to the supposition of a natural law, placed above the state. Legal positivism which was all out to get rid of natural law, introduced the tenet that citizens' rights, just like other basic provisions of the constitution mean, in fact, a self-limitation imposed by the state upon itself. This explanation, the fact apart that it is a vicious circle, does not account for the objectively determined character of the substance of citizens' rights, and in the last analysis it leads to recognizing the feasibility of their arbitrary delimitation.

The socialist theory of citizens' rights takes it as its starting point that citizens' rights reflect not the relationship between man in itself and society, nor the relationships between an abstract "man" and the state. The basis should be society organized in a state, and these rights should reflect the relationship between the state and its citizens (or certain aspects of this relationship). It goes without saying that in a socialist society the relationship between citizen and state has evolved in a new manner, understandably different from the bourgeois conditions. This relationship is tied up with the fact that the production and distribution process applied for the bulk of the means of production (being in the property of the people), are owned by the state, and the socialist state is in charge of organizing national economy. Based on this factor the nature of political power, the attitude of the majority of citizens, subsequently of all citizens, towards the state undergoes a complete change. Both relationships, the material, and the non-material or political ones find expression in the political-legal part of the superstructure, assuming legal forms. Citizens' rights have the specific feature in this respect that these, as institutions, comprise *simultaneously* these different relationships. As national economy in a socialist state becomes "state-run", this creates the conditions for uniformly securing citizens' rights as state rights. However, when the socialist state lays down the citizens' rights in statutes or in the constitution, it cannot act arbitrarily but has to give expression to the class-will, the will of the working-class, which will is ultimately determined by the socialist production relations. Accordingly, citizens' rights are borne out and reflected in the political-

legal superstructure whose nature and extent are ultimately determined by the economic foundation of the socialist society. In ratio of the development of the economic foundations, the building up of socialism, then of its reaching the road of communist construction: the scope of citizens' rights, the extent of the economic, social and cultural rights is becoming wider, socialist democracy is becoming more comprehensive and, in general, the political rights securing, for all citizens, the opportunities to actively participate in the leadership of society are becoming augmented.

It may be clear from the above that socialist theory when it rejects the natural-law origin of citizens' rights and is unwilling to deduce them from either the nature of man or from human mind, it nevertheless does not commit the fault to side with the "crime" of positivism. I.e. it does not come to the conclusion that citizens' rights are constituted at the behest of the state, but it reveals that these are rights determined by the economic system of society. In this way (just like in every materialist concept) the Marxist concept of law has to transgress law itself in order to know its own substance and the substance of citizens' rights. However, after taking this step, it will not arrive at a "law-outside-positive-law" but at the factors determining law, the "metajuridical" causes of law.

When however citizens' rights are appraised as the expressions of certain non-material social relationships, objectively determined in the relation between state and citizen (the reason why this institution emerges as a distinct, separate entity will be discussed subsequently) it must also be recognized that the relation between state and citizen is borne out not only in the citizens' rights but also in citizens' duties. This fact would give rise to the appearance as if in a socialist society citizens' rights were of less significance than in the bourgeois society: these being tied up which citizens' duties while — as has been indicated — citizens' duties are neglected in bourgeois constitutions. But it should be added that also in bourgeois societies citizens' rights correspond to citizens' duties; only bourgeois legal systems do not explicitly lay down citizens' duties either omitting them altogether, or expressing them by high-sounding but empty phrases. These duties are contained in various branches of the bourgeois legal system but reduced hierarchically to a sub-constitutional level; the reasons for this fact were amply discussed beforehand. On the other hand, owing to the fact that citizens' rights have emerged in the socialist society on a different economic basis and under different political and power conditions, giving expression to the substance of the relationships between state and citizen, citizens' rights are supplemented with citizens' duties and constitute a complete unity in the socialist constitutional regulation. It is also clear that within this unified system the citizens' duties have not been elaborated in the theory as extensively as the citizens' rights. This is no doubt due in part to historical traditions and the effort that socialist constitutions should reflect clearly and unequivocally the new character of formerly known rights and the new manner of their implementation. This, however, does not change the fact that citizens' duties "rank equally" in socialist constitutions with citizens' rights, and both categories are equal constituents of the constitutional regulation which may be regarded as the unified system of citizens' rights and duties.

2. THE LEGAL NATURE OF CITIZENS' RIGHTS AND DUTIES

As follows from the aforesaid, citizens' rights and duties are the most important constitutional expressions of the economic (and the concomitant social and cultural) and political relationships between citizens and the state.

Also in socialist legal literature one comes across the phenomenon that citizens' rights are divided into *rights and liberties* (or freedoms). In bourgeois legal writings this distinction, as mentioned, did have some justification. Though not universally shared, this distinction was the theoretical counterpart of the distinction which professed citizens' rights to be rooted in the duality of liberty and equality of rights. This distinction depended on how the state acted in their implementation, namely in an active or passive way. Accordingly those rights in relation of which the government promised a passive attitude (i.e. declared that certain activities would be free from legal restrictions) were termed not rights but rather *liberties*. The delimitation of the citizens' "free activity" and the negative attitude of the government was necessary in order to make clear what fields were exempt from government interference, or more precisely what were the fields in which the feudal state did interfere but the bourgeois state did not — for one reason or other. This borderline was a very controversial one, particularly in the age of the transition to the imperialist stage of capitalism. Attempts were made to deny the legal nature of these liberties claiming that these belonged to a "legal vacuum". Proclaiming such liberties — it was claimed — had no meaning, for it was merely incidental which liberties were or were not proclaimed in the constitutions. No dividing line can be drawn — it was further suggested — e.g. between the freedom of expression and that of dressing or even breathing. No firm limits can be drawn between legally declared and undeclared liberties. But these formalistic arguments leave out of consideration the historical element and the social reasons both in respect of the emergence and the rejection of the so-called liberties.

This is namely a closely interrelated problem of two questions: the right to be laid down and the manner of their laying down in which content and form are tied up. As far as the content is concerned the bourgeois state had of necessity to part with the feudal system and had to declare certain conducts as free, or permissible which had been forbidden in the feudal state. These conducts partly resulted from the interrelation between economic and political power to be exercised. In these respects the decisive point, historically, was the promise of a non-interference by the state. This however did not amount to a lack of regulation, the loss of the legal nature of "freedom". Let us have a closer look, within the scope of political rights at the freedom of religion. When this right came to be declared as a liberty it meant on the one hand — at least in principle — that the state would be emancipated from the influence of the church, that religion would cease to be a political concern; it meant on the other hand that the state — at least in principle — gave expression to the so-called freedom of conscience, in other words, that no discrimination would be made by the state between various

religious denominations and the observance of various faiths would no longer be a matter of politics. To give a formal expression to both aspects, to declare it as a liberty offered itself as an excellent solution: it meant their enactment in a form which appeared to indicate that these problems were not a concern of the bourgeois state, not even to the extent that it would wish to draw these within the realm of politics and legal regulation. This was however only a semblance both as regards content and form: the capitalist state after having freed itself from the fetters of feudalism was compelled to regulate its relationship with the church under law and was also compelled to regulate the freedom of conscience of citizens as a right which included certain government measures. Thus it is not true that the bourgeois state left something outside of regulation which had been regulated by the feudal state and placed it in a "legal vacuum", but rather regulated it in a *different* manner. The fact remains that neither in principle nor in practice there can be question of a liberty devoid of law. In other words the distinction between rights and liberties is of a very relative value also under bourgeois conditions. (In any case bourgeois philosophy was not trying hard to draw a firm dividing line in theory between rights and liberties.)

As to the argument that the scope of human or citizens' rights is, in principle, unlimited and that the liberties in bourgeois constitutions were incidentally grouped together, it is clear that this argument also suffers from a lack of historical appraisal. There were very clear reasons why the capitalist class enacted certain "liberties". These were such liberties which had to be freed from feudal restrictions and which had an outstanding social importance for the capitalist social and political system. It may be argued that these legally regulated rights might have comprised also other rights. Thus e.g. it would not have been surprising if the freedom of the choice of dress had also been laid down under law, for it is a fact that feudalism had imposed certain restrictions upon the dressing of burghers. Looking at the "choice" of liberties from the purely legal angle and their legal enactment with modern eyes, it may seem somewhat arbitrary and lacking logical foundations but their emergence was, historically, strictly logical. It is again another question that the logic of history in a given period has become crystallized and liberties which had become socially anachronistic, were retained as constitutional provisions. These may appear as inconsistencies but it may well be that the retention of these rights as liberties is warranted by certain political or ideological reasons even today. The fact is in any case that these liberties had been from the outset rights, citizens' rights, and this nature of theirs has become more apparent in the course of the evolution of bourgeois states, inasmuch as they came eventually under a detailed legal regulation. That "liberties" became "rights" was helped by the fact that the working class endeavoured to make use of the liberty proclaimed by the bourgeoisie against the feudal system or — owing to the irony of history, as put by Engels, — the working class was fighting for their implementation while the bourgeoisie was all out to get rid of them or at least to restrict them. In this course, liberties have become rights also in the sense that they were invested with legal restrictions.

Thus the distinction made between rights and liberties can be explained by history itself, but the latter still does not answer the gist of the problem. As far as the bourgeois conditions are concerned, it has been attempted to show that the distinction made between rights and liberties is made within the group of citizens' rights. This is, then, not a distinction between rights and freedoms but a distinction between rights on the ground of the nature of the government activity required for their implementation i.e. an active or passive conduct. On the other hand the question arose also in respect of citizens' rights: what principle of interpretation should be applied, or rather what legal fiction of law should be used: is everything permitted which is not precluded under law, or is the scope of the free activity of citizens limited to the sphere explicitly allowed under law? Taken these extreme maxims in themselves and abstractly neither of these is true, these being *a priori* tenets to denote the legal policy in various stages of capitalist development. Neither of these tenets can be considered as a starting point. In the capitalist society these prevailed in respect of citizens' rights as trends at most, in a way that the first maxim was applied to a group of citizens' rights — those connected with the right of ownership — and the second was applied to another group — rights of a political nature — until even this trend was broken by the changed historical conditions. The question now arises whether such a maxim may be conceived in respect of socialist law (not as an assumption but as an abstraction deduced from positive law) which would serve as a guiding principle for the entirety of citizens' rights or a certain group thereof? To put it in a more practical manner: is under socialism the emphasis in respect of certain rights of citizens on a passive state conduct, and again on active state conduct in respect of another group? As it is seen the question is couched not in the terms of rights or liberties (although this expression is used sometimes in political literature); the main point is whether importance and if so, what importance should be attached in the classification of citizens' rights to the fact that the state, the law regulates their implementation? We may as well premise the essence of our standpoint, based on the foregoing; it is certain that, in principle no far-reaching, let alone overriding significance must be attached to this distinction either in socialist or any other law. This follows from the fact that it is invariably a matter of *rights* not of liberties inasmuch as the state can never remain completely passive. The state is compelled to introduce legal protection for the legal implementation of the so-called liberties and in fact does so, disregarding for the moment the consideration whether, in some social systems this legal protection remains an empty declaration or becomes a social reality in others. Accordingly the duties incumbent upon the state corresponding to the citizens' rights must, in principle, be more than just the promise of a passive conduct.

It is obvious that in a socialist state a higher degree must be reached. As, in conformity with the essence of the socialist state and society the relationship between citizen and the state will undergo changes, thus the duties incumbent upon the state towards its citizens (in general and in respect of safeguarding their rights) must likewise change. The main substance of these duties is: the state shall intro-

duce material, political and legal safeguards for implementing citizens' rights. Although there are rights the constitutional expression whereof reminds in part of the traditional constitutional terms, socialist constitutions never lose sight of the fact that the role of the state has undergone basic changes. The Hungarian constitution e.g. provides for equality before law and the equality of rights unconditionally, irrespective of differences of race, religious denomination or nationality. But it is also laid down that any discrimination contravening these provisions shall be severely punished by law. This provision is supplemented by another one according to which the Hungarian People's Republic secures for all nationalities educational opportunities and the cultivation of national culture in their mother tongue (Section 49). It is clear from the example now cited that the state has undertaken obligations as to protection under criminal law and what is more, actions of an economic and cultural nature which bring to light the implementation of that right. The same solution is encountered also in other contexts. When laying down the equality of women the Constitution lists directly those major social and economic institutions and measures which the state has undertaken to establish or introduce. The Hungarian — as well as the other socialist constitutions — regulate other rights of citizens in a similar way: the rights are coupled with those actions of an economic, social and political nature which are indispensable for implementing these rights.

Considering the above, it may be stated that the safeguarding of citizens' rights under socialist conditions requires the socialist state always to display an active attitude. Consequently, the question cannot be posed, whether a distinction should be made between citizens' rights and liberties, and it cannot be stated either that in respect of rights formerly termed liberties we might rest contented with their simple proclamation. The activity of state assumes, as a rule, legal forms but the legal form is an expression of economic, social, political, cultural etc. conditions determined by the level of development of the socialist society, and ultimately by the level of development of socialist production relationships. It must not be left out of consideration that in safeguarding citizens' rights the various social factors have a varying *direct* role to play: in several instances it is the formation of appropriate political and legal institutions, the introduction of criminal-law protection which is in the foreground, while other rights require the introduction of measures of an economic, social and cultural nature. But it is also a fact that the latter are also connected with certain actions of a legal nature while the extent of the former is dependent, in the last analysis, on the level of the development of the socialist economy and the related evolution of class relationships.

Summing up the above it may be stated that

(a) the relationship between the socialist state and citizens' rights is invariably an active one, in other words it requires on the part of the state actions, and activity of a legal, economic, social, political, cultural nature, directed at the implementation or protecting the enforcement of these rights;

(b) therefore the character of the single rights of citizens is neither exclusively of a permissible, or exclusively of a prohibitive nature, but indicates both di-

rections, i.e. the extent of the right, the "liberty" and also its conditions are defined;

(c) within such a unified character of citizens' rights in respect of certain rights the state has the obligation rather to take positive economic, political legal etc. measures to have these rights implemented, while in regard of other rights it has the duty to take both positive and negative measures to enforce these rights; negative in the sense that their enjoyment shall not be hampered, positive in the direction that the citizens shall actually avail themselves of the respective rights.

In the last clause listed under (c) an answer may be found to the question what activity shall be exerted by the socialist state in respect of the citizens' rights. This activity involves in one sphere economic, social, cultural, etc. measures which usually are issued in a legal form (statutes, resolutions): in the other sphere the content of the actions to be taken is fully covered by the legal provisions aimed at safeguarding citizens' rights (provisions of constitutional law, criminal law, administrative law, family law, etc.) and the politico-legal acts taken for their implementation. This division is to a certain extent connected with the problem whether the state has undertaken obligations in a positive or negative direction, in other words, whether it is bound to act or to refrain from acting? There cannot be doubt that the implementation of economic, social and cultural rights necessitates in the first place active measures in the economic and other fields. Within another scope of citizens' rights, the political rights taken in a wider sense, it is the legal measures which are dominating; the related obligations of the socialist state are characterized by a certain negative conduct, i.e. that the attitudes in question are made free within the legally defined limits. But these very rights reveal a certain new trait, closely related to the socialist system of society, namely that although citizens' rights mean, in principle, only opportunities to which would correspond the negative obligation of the state to create "liberty" within this sphere. However, such a concept will not comprise the social substance of such rights, because the socialist state has the further obligation to secure that citizens make *real* use of these opportunities as rights. Thus e.g. as far as the freedom of press is concerned, it would not suffice to introduce mere legal protection for its safeguarding and to define the scope within which the press is free for the working people; the state also has the duty almost to "create" press, to contribute through various measures to its unfolding in all fields of reporting, the political and technical spheres, of press, etc.

The concept of citizens' rights as legal *opportunities* is thus correct as regards the relation between the socialist state and its citizens. In socialism it is, however, not merely a matter of legal opportunities (like e.g. the right of private ownership as a citizens' right in the bourgeois society where, in principle, everyone was entitled to acquire private property), but here the state must create real material and social conditions which provide opportunities for the single citizen, or for every citizen, to make real use of these rights. Thus when citizens' rights are viewed as opportunities secured by the state it is only the legal aspect of the problem which we have grasped. The *implementation* of these rights is measured by their actual en-

joyment and by the extent of the transformation of potentialities into *realities*. Therefore citizens' rights mean a legal potentiality which require government activity to become a social reality, a social fact. For this very reason the veritable social purport of citizens' rights cannot be qualified as a mere potentiality: this is characteristic only of the legal structure. If e.g. the equality of women comprises the opportunity for women to take part in public activity and discharge public functions on equal footing with men, it must be clear that this *legal* opportunity will only have a significance for society, and it may only be considered a citizens' right if women actually do take part in public activities, occupy public posts just as men do. It is the very characteristic of socialist society that it secures appropriate conditions (material, political, cultural etc.) for these rights becoming facts of life. A citizens' right considered as a "subjective" right means a legal opportunity, the implementation of which is secured by the state through legal means and the curtailing of which is prohibited under law, — but this concept, in itself, will not bring to light its nature, its social purport.

When the problem is approached from another angle the same conclusion will be reached if we examine the relationship between rights and duties of citizens. If namely citizens' duties involve an unconditional way of conduct which is in the interest of state and society — and citizens' duties do, in fact, have this nature — the conclusion might be drawn that the relationship between citizens' rights and duties is one between a compulsory conduct and an opportunity: the former is more or less unconditional, while the latter is merely incidental. But according to such an interpretation the relationship of the citizen to the state would be disproportionate: it would be shifted towards citizens' duties which would be stronger than their rights. This paper is not concerned with examining the actual situation prevailing in this respect in bourgeois societies but it is obvious that in a socialist society this relationship cannot be as one-sided as that, or rather the semblance of one-sidedness may arise only if the legal structure of rights and duties is compared. It is namely clear that in this purely legal concept citizens individually and collectively are bound by law (so-called objective law) to observe a certain conduct on the one side, while on the other side something is permitted, an opportunity is provided. One side would be characterized by an unconditional legal subjection, the other one by a certain legal autonomy; i.e. the one would recall the former public law, the other the former private law structure. On the other hand such a self-contradictory situation cannot be conceived either, in which the state would compel the citizen to make use of the potentialities of rights. All these considerations show that *no solution can be found in the legal or constitutional system alone* as to the real relationship between citizens' rights and duties, and the studying only of the legal structure cannot serve as a sufficient ground for discovering the content of the given legal institution. The unity and the correct ratio of citizens' rights as *legal* opportunities and citizens' duties as *legal* obligations is governed by the existing social system. It is only in the socialist society where the conditions are created under which the actually exacted duties are matched by the actually enjoyed rights. Through these new social conditions also

the legal structure is altered because the nature of citizens' rights cannot be covered merely by presenting these as providing legal opportunities; it must be added — and it must be shown simultaneously in the legal structure — that such opportunities require the socialist state to secure conditions which turn these potentialities into realities, in other words, when masses of citizens are able to make use of them. It may be seen that the formal aspect of the legal structure must be absorbed by the content, and this very substantive aspect of citizens' rights, — when their enforcement and their actual implementation are made a *constituent of their concept* — bears out their new, socialist character and the new relationship between the socialist state and its citizens.

3. THE RELATION OF CITIZENS' RIGHTS AND DUTIES TO VARIOUS BRANCHES OF THE LEGAL SYSTEM

The relation between citizens' rights, duties and the various branches of the legal system is complicated, manifold. Its main feature is that while citizens' rights and duties express the sum total of the principal aspects of the legal system (or its part regulating the relation between state and its citizens), but they also serve, on the other hand, as starting point for various legal branches. As far as the *entire* system of citizens' rights and duties laid down in the socialist constitution as a separate legal institution is concerned, it clearly comes within constitutional law. Some of the citizens' rights and duties — those of a political nature — are regulated in detail by the provisions of the constitutional law outside the frames of the constitution. Other regulation relating to rights and duties of another nature is to be found in other, substantive and procedural branches of law. This accords with the maxim held in the science of constitutional law on the duality of constitutional law statutes, which are partly "direct" and partly indirect. The constitution itself occupies an outstanding place within the socialist constitutional law and so it is of a fundamental significance that citizens' rights and duties are laid down in the constitution.

But it must also be kept in mind that citizens' rights and duties constitute a *distinct* institution of constitutional law which becomes valid through its inclusion in constitutional law, in the constitution. To admit that the constitutional provisions on citizens' right and duties are enforced through the media of legal branches, would be an acceptance of the views of those who regard citizens' rights and duties in themselves to be of a purely academic value. The concept sometimes encountered in bourgeois legal writings, according to which the declaration of citizens' rights in the constitution is but an obligation binding the state to take certain actions, to enact certain statutes for their enforcement, would also lead to the denial of the independent existence of citizens' rights and duties. Although it is clear that the latter impose certain obligations upon the state to pass legal and other measures, still it does not and cannot mean that until such measures are taken these would not be effective rights and duties but merely promises laid down in the constitution. The relation between the provisions of legal branches on citizens' rights and

duties and the latter is entirely different. Citizens' rights and duties are, by virtue of the constitution, directly effective but the branches of law define their (a) limits, (b) their substantive extent and (c) the modes of their implementation.

It follows from this that citizens' rights and duties outlined in the constitution, are included in the branches of law in a detailed manner. But following this train of thought it would be a mistake to suppose that the entire socialist legal system is nothing but the unfolding and breakdown of citizens' rights and duties. True, all provisions of the legal system might, in fact, affect citizens' rights and duties directly or indirectly, for statutes not directly bearing upon citizens' rights and duties may be meant to enforce these rights, and to induce the citizens to comply with their duties. But in such a concept citizens' rights and duties would be diluted in the generality of the legal system. This would be theoretically untenable and would be at variance with the actual state of affairs in the socialist state and legal system. Thus, e.g. the whole body of labour law could hardly be considered as a simple realization of the constitutional right to work and the corresponding general duty; this would amount to denying the distinct social and legal nature of the right and duty laid down in the constitution. Although of course it cannot be doubted that it is the citizens' right and duty to work which constitutes the legal foundation of the provisions of labour law. There is a close interaction between citizens' rights and duties and their detailed inclusion in various legal branches. In the branches of law — in respect of citizens' rights and duties a distinction should be made between provisions connected *directly* with the given right and duty, and those other provisions which, although they may ultimately also be connected with citizens' rights and duties, but in their substance apply to another legal relationship than the one the content of which is the given right and duty. This delimitation must of course be done for each single legal branch, and separately for each single right and duty of citizens, and it is also undoubted that the dividing line is in many instances indistinct. Still, it is an essential task that a distinction be made between the statutes aimed at directly implementing the given constitutional right and duty, as a part of the institution of citizens' rights and duties and those rights, and the obligations which appear otherwise in legal relationships based on various branches of law. This requires that the content of citizens' rights and duties be approached through revealing the grounds which are necessary to draw this dividing line.

If the general statement is taken as a point of departure that the legal system contains rights and duties in respect of citizens, it may be said that the constitution of the socialist state seizes the most momentous among these and raises the fundamental ones among them to the level of citizens' rights and duties. This delimitation is not the outcome of a difference in quantity; it is based on the recognition that there is a certain qualitative difference between citizens' rights and duties on the one hand and other rights and obligations laid down in statutes on the other. This is the very justification for citizens' rights and duties as a distinct institution. The essence of and the reason why citizens' rights and duties have been distinguished by including them in the constitution is to be found in their

expressing the *basic* relationship between the socialist state and its citizens. This relationship is ultimately determined by the economic foundation of the socialist society, as said before. The fact e.g. that the socialist state is bound to secure the right to education follows from the essence of the socialist state and society, just as the duty of citizens to respect social property which is the foundation of socialist production relations follows from it too. On account of this characteristic feature these substantial basic rights and duties have been laid down in the supreme politico-legal document of the socialist state as a separate institution. Compared to these *fundamental* rights and duties it is of secondary importance that statutes within the single legal branches lay down other distinct rights and duties. It is of secondary importance e.g. in connection with the right to education at what level is free schooling granted, or in what manner is social property protected under the rules of civil criminal or administrative law. All these are distinct legal titles and obligations in the respective branches of law, but this separate entity is relative inasmuch as it follows from the fundamental constitutional rights and duties. To cite another example: the freedom of association of the working people is a basic right of the citizens which "is valid" in itself. The manner however in which this right is implemented by the socialist state and the additional rights and duties engendered in this course are both subordinate to the fundamental right and constitute the content of a separate public law relationship.

It is usually suggested that this is but a relationship between a basic legal provision and its enacting clause. This view does not adequately reflect the actual position, for it would be tantamount to holding that citizens' rights and duties remain on the level of high-sounding declarations until the enacting clauses are adopted, and therefore the declaration of these rights would only lay down duties imposed on the state in respect of certain actions to be taken subsequently. This is, however, not the case. Such a view is contradicted by the fact that socialist constitutions not only lay down the citizens' rights but also define the material and legal safeguards of their enforcement. The heart of the matter is that citizens' rights and duties have a *distinct legal character*. It may be clear from the above said that citizens' rights and duties are the legal reflections of the economic, political and related relationships between the socialist state and its citizens, — in which these relationships appear in generalized and abstracted rules of conduct. Thus citizens' rights and duties reflect the *content* of these relationships, i.e. in a more restricted sense, of the relationship between the socialist state and its citizens, in a legal form. Viewing the problem from this angle a distinct content is found which is *effective* without further provisions, which is the reflection of the actually existing relationships or relationship. This is the *general*, legally expressed aspect of citizens' relationships.

Another essential aspect of the issue, which is determined by the general aspect is, how *individual* relationships come into being by virtue of the citizens' rights and duties. According to several traditional legal writings, citizens' rights and duties may be considered as real rights and duties if individual relationships — and within this scope legal titles and obligations — can be directly derived from

them. Those writers who had recognized citizens' rights and duties as real legal institutions maintained this view by putting forward the argument, that citizens' rights and duties were veritable rights and duties because they created individual rights and duties. On the other side were those who denied that citizens' rights and duties could be distinct legal institutions, holding that these could not be considered rights and duties in the real meaning of the term, because these did not or could not create individual rights and obligations. It is clear that we are confronted again with the problem of subjective rights: the question being, whether citizens' rights and duties should be regarded as subjective rights and duties, enforceable at law etc. The way of posing the question is the outcome of the concept of subjective rights as understood in the law of procedure: in other words, a concept according to which the legal nature of subjective rights cannot be admitted unless these may be enforced through individual action. This procedural view was in fact transferred from private law, and the private-law concept made headway towards judicial protection: the idea of administrative tribunal proceedings became connected with subjective individual public-law rights. The fact apart that such a retrospective view of the matter, the substantive adjudging of the question on a single procedural possibility was, as a matter of course, beneficial for the objectives of the capitalist class, this view — as a whole — cannot be considered, as correct. Procedural consideration cannot serve as a single standard for individual rights, let alone as the first one, because none of the formal criteria alone can adequately characterize individual rights. Such a concept cannot apply particularly to citizens' rights and duties because these can be implemented, in general, also in the absence of direct procedural protection and opportunity, ultimately as determined by the nature of the given social system, but, taken as a whole, through other constitutional safeguards as well. In the socialist state the organs in charge of supervision over the rule of law, but also other state agencies, control the implementation of citizens' rights and duties in their *entirety* within their sphere of authority, and where necessary take appropriate action or initiate the enforcement of rights and compliance with the duties. For this reason it is absurd to state that the absence of the direct individual opportunities of enforcement of citizens' rights and duties and the absence of special departments or procedure would deprive citizens' rights and duties of their legal nature and would reduce them to mere declarations of principle or provisions binding the socialist state to take additional measures. This concept would amount to misjudging citizens' rights and duties as a distinct legal institution; to try to seek the safeguards of the whole institution exclusively or principally in the sphere of individual legal remedies would result in an atomized view, in disregarding the general as against the individual. It will suffice to recall that under bourgeois conditions the procedural safeguards of the individual enforcement of citizens' rights have been introduced in a number of instances under law; this notwithstanding these rights have not become, in their entirety, a social reality, their overall implementation has not characterized capitalist society. On the other hand socialist society is characterized by the overall implemen-

tation of citizens' rights, irrespective of the fact what legal conditions have been introduced for their individual enforcement and safeguarding. Although there may be found divergencies in respect of the categories of citizens' rights, (between the economic, social and cultural rights on the one hand, and political rights on the other), still, looking at the totality of these rights, the safeguards of the implementation of citizens' rights — on the constitutional level — must not be looked for in individual procedural possibilities. That citizens' rights and duties have been laid down in the constitution, gives expression to their above-mentioned comprehensive nature.

All this does not run counter to the fact that citizens' rights and duties are laid down in detail, broken up to their constituents, in various legal branches from which individual legal relationships, rights and obligations are derived. This is another plane of the individual implementation of citizens' rights and duties, subordinate to the constitution, on which plane rights and duties mean also the consequences of the rights and duties laid down in the constitution. The relationship of the dual expression mentioned in the foregoing is one between the general and individual in which the general comprises the individual. It would equally be mistaken to observe the institution of citizens' rights and duties as a mere constitutional generality, and to regard the role of this institution laid down in details in the branches of law principally in the form of individual relationships: detached, separate from the general provisions of the constitution. This duality, such a relation between the general and individual, applies not only to citizens' rights and duties but also to the connection between the socialist constitution and the individual branches of law, to the unity of the entire legal system and within that the distinct place of the constitution, to the direct effect of the latter as well as the indirect force of it through the media of the legal branches.²⁵

Now let the summary question be asked: are the rights and duties laid down in the constitution subjective rights and duties? If subjective rights (and duties) are understood as something not falling outside the sphere of objective law but something which means the repercussion of objective law on subjective rights, then citizens' rights and duties must be recognized ultimately as constituting the relationship between the state and its citizens, and the rights, duties emanating from this relationship. (Meaning that aspect thereof affecting the citizens.) Of course, insofar as the rights and duties have a bearing upon the relations of citizens *inter se*, these are also determined through the relationship between the citizens and the state. In this sense the rights and duties of citizens laid down in the constitution are on all accounts subjective rights and duties but — it must be instantly added — of a specific nature, different from those laid down in the legal branches. This specific nature is both qualitative and quantitative. Citizens' rights and duties comprise the *most general, basic* features of the relationship between the citizens and the state (or of the relation between the citizens which is determined by the

²⁵ See on this by the author: Az alkotmány helye népi demokratikus jogrendszerünkben, (The place of the constitution in our People's Democratic legal system). Jogtudományi Köz-
löny; Nos 10—11, 1959.

former relationship). An additional specific feature of these rights and duties is, that they appear *in conjunction, in unity* with their own detailed regulation, viz. rights and duties laid down in various branches of law which are in a sense the sequels, results of the citizens' rights and duties laid down in the constitution. From this follows the qualitative characteristic of this legal institution that the rights and duties coming within this scope are the *general aspects* of a legal relationship and of the totality of legal relationships which attach to the citizens in their *masses* and also as *individuals*. In other words the individual relationships between citizens and the state appear in respect of citizens' rights and duties in their general character but this fact does not deprive them of their nature that they also express the individual — as laid down in the various legal branches. Thus, in the last analysis the *general and individual* relationship between state and its citizens is expressed in citizens' rights and duties in a general form.

It may be clear from the preceding examination that it is not the function of citizens' rights (and duties) in the socialist state and legal system to give birth directly to individual rights; these become merged at a certain level with the rights laid down in the legal branches and constitute thereby the general aspect of citizens' rights (and duties). It was also to be seen that citizens' rights are not devoid of individual features, but this is not their essence. Although in the socialist legal system there is no special organ established solely for the purpose of remedying infringements of the citizens' rights, nothing stands in the way of citizens relying on and evoking directly the provisions of the constitution, to institute proceedings by resorting to the *general* institutions (organs) entrusted with controlling the rule of law in case their rights have been infringed. Among these institutions of socialist countries the very extensively established right of complaint should be mentioned, which is outside the frames of the legal remedies strictly taken and possesses a general character itself. The role of the socialist state attorneys' offices is of a particular importance, the sphere of authority of which, conceived in a wider sense, obviously covers this field too. As a matter of course more elaborate studies are needed to find out what should be regarded as an infringement of the rights laid down in the constitution. It must obviously be taken into account to what extent is the socialist state capable at a given stage of development to secure certain fundamental rights. This problem brings us back again to the inclusion of certain rights of the citizens into legal branches, to the statutes defining the scope of operation of these rights which — as has been pointed out — constitute a unity with citizens' rights at a certain level without however the citizens' rights losing their distinct place within this interrelation of the general and individual. In the last analysis we arrive here at the unity of the socialist legal system which reflects reality. A unity in which various institutions are interrelated in the way as the general and the individual are, and retain their distinct place while they are inseparably coupled together with each other. Such a concept of citizens' rights and duties, and the place as well as function assigned to them within the legal system is susceptible of solving the theoretical problem of those contradictions, beyond which either bourgeois legal thinking or judicial practice

proved unable to go. Through this concept a number of problems can be solved which were raised in bourgeois legal philosophy in respect of citizens' rights and duties, particularly as regards their relation to various institutions in the branches of law.

4. THE SYSTEM OF CITIZENS' RIGHTS AND DUTIES

When the system of citizens' rights and duties is established it appears suitable to take as a starting point the differentiation between material and non-material social conditions, and correspondingly between rights of an economic character (widely understood) and political rights (also widely understood). This division is reminiscent of the "human" rights and the rights of the citizen adopted in the bourgeois society; this is easy to understand because although the harmony between economy and politics has been brought about in the society of transition between capitalism and communism, but the differentiation between the economic and political organization has not been rendered unnecessary. It should be added that the division of citizens' rights into rights of an economic and political nature is by no means identical with the delimitation as adopted in the bourgeois society. As could be seen, in socialist theory the economic rights are not considered as "human" rights preceding the existence of, and standing above, the state. These are regarded also as political rights, the objects of which are provided by the economic conditions and which find expression in the superstructure, among other things, in the form of citizens' rights. As the means of production become social property the character of the production has changed; the position of individuals occupied in the process of production has also changed, just like their relation to the means of production. Accordingly, economic and the related social and cultural rights of a novel type come into being. In keeping with these changes the political organization of society has also fundamentally changed which has resulted in lending a new substance to the rights of a political nature of the citizens. And, finally, as both large categories of citizens' rights are expressed — in the socialist society — clear of ideological distortions, their homogeneous character as "citizens" rights is undoubted and their grouping is placed within that category.

For good measure it must not be forgotten that "human rights" are encountered also in the socialist literature, *in writings on international law*. Reference has already been made to the demand, raised especially after the second world war, of protecting or regulating citizens' rights on an international scale. The relating international instruments and drafts contain, due mainly to the impact of the socialist constitutions, the division of citizens' rights into these two large groups. References are found in these documents to economic, social and cultural rights and also to civil and political rights, but both categories are termed, somewhat surprisingly, *human rights* in writings on international law and politics. It would appear from this term as if a return had been made to the natural law concept while this is not the case (at least not in socialist writings on international law).

The term "human rights" in this context means but the undertaking *by the states* of obligations pursuant to the United Nations Charter, the Universal Declaration of Human Rights of December 10, 1948, and eventual future international instruments of such content, to enact human rights in statutes and to safeguard them through government measures i.e. to proclaim and to enforce citizens' rights. Accordingly the term "human rights", viewed from this angle does certainly not mean an internationally accepted stand in respect of the nature of citizens' rights.

As far as the first large category of citizens' rights, the rights of an *economic* nature are concerned, a more or less generally accepted division has evolved according to which this group comprises (a) economic, (b) social, and (c) cultural rights. The unity of these rights is brought about by their dependence on productive activity: the rights connected with social welfare are related to this activity just as cultural rights are, through which opportunities are secured for acquiring a constantly rising standard of education, which is both a prerequisite and the result of the material development of society. In the second place it is a characteristic feature of these rights that the state assumes positive obligations principally in respect of introducing measures in economic organization, to secure their actual implementation. It is also characteristic of them that the augmentation of their volume, the range of their operation is directly connected with socialist economic expansion.

As follows from the aforesaid the other large category of citizens' rights comprises those rights which originate in the socialist state being the political organization of society. Consequently citizens are accorded various rights which directly affect the relationship between the citizens and the state and among the citizens themselves. It follows from the essence of socialist society that in respect of citizens, their personality, it does not recognize any discrimination either on the ground of sex, religious denomination, or nationality. Obviously this is the most important among the political rights, in a wider sense, which serves as a foundation and starting point for other rights. Equality before law involves also in the socialist state a general equality of these rights. But it is not merely a declaration of legal equality because it is a formulation of an actual situation safeguarded by a number of legal institutions. A mere proclamation of equality would not satisfy a socialist state and therefore adequate legal (and non-legal) conditions are created for its effective enforcement. Equality before law as a legal and formal principle does not cover the entire socialist equality principle. Such positive measures are taken and such enactments are adopted which aim at accomplishing real equality among citizens. These measures appear within the scope of citizens' rights in the form of economic rights, the right to work, the additional rights of women, assistance to families, new-type wage-system, etc. These measures also mark the interdependence between the various types and categories of citizens' rights. Lastly, it should be pointed out in respect of the equality before law, that this contains *the most comprehensive condition* under which citizens are able to enjoy the totality of their rights. Simultaneously, it plays a functional role as regards all the other rights

of citizens — as it follows from the political, legal organism of society. All rights of citizens' are accorded on the ground of the principle of equality before law, while it is itself a basic right of the citizens.

Those rights of citizens which serve to secure direct opportunities for them to form various associations, mainly of a political character, for the protection of their political, economic and other interests, to take part through exercising suffrage and on the ground of eligibility, in the activity of government organs, and to enable the citizens to express their views freely either through spoken word or in printing — these have been considered in legal literature as specifically political rights or even freedoms. This category of citizens' rights might be termed as political rights in the stricter sense — but this would not express their substance under socialist conditions. It is widely known that in bourgeois states, simultaneous with the proclamation of these rights, a contrary practice, directed at their restriction has evolved. So that mainly the working-class, the wide strata of the working population have been deprived of these rights accorded, in theory, to everyone by the bourgeois state. For this reason the working masses are forced to wage a political fight for the implementation of the proclaimed rights; progressive forces join the working masses in this fight waged against the imperialist state. The achievements attained in the struggle waged for the implementation of the proclaimed rights have, in turn, opened up new legal opportunities for the political fight. As it follows, these rights are in the capitalist society of a political nature not only in theory and not only in that they apply to the relationship between the citizens or certain groups of citizens and the state, but they are political also in the sense that they constitute the objects of political struggles and also, insofar they are implemented, serve as the means of this political fight.

In the socialist state the situation becomes altered owing to the fact that it is the state of the majority of citizens and, later, of the entire population. These rights cease to be the objectives, means and frames of political struggles and become political inasmuch as they are related to the political organization of society, define the citizens' rights in respect of this organization and bear upon the role of the latter. It might even be said that some of these rights are not dominated by the political element in the narrower sense of the term. Suffrage comes undoubtedly under the category of political rights and there are clearly direct political elements in other rights falling within this group, but this does not express completely their content. It is but natural that the right of assembly and association contains the right of the working masses to form organizations of a political nature, but it is also clear that it does not belong to the content of the right of assembly and association under socialist conditions that the working masses, the citizens of the socialist state create organizations *against* the socialist state. The fact that the citizens of the socialist state form numerous social, cultural, other associations, societies, and organizations and that they make an extensive use of the right of assembly involves a changed political meaning of these terms. These social and mass organizations, together with the trade unions and cooperatives are participating to an increasing extent in the conduct of political, govern-

ment affairs. Part of these will be transferred to the authority of social organizations in the way leading towards the establishment of communist society. These organizations are parts of the self-administration of society which will eventually replace the administration by government organs after communist society will have been fully established.²⁶ It is also known that the role of the trade unions which protect the interests of the working masses is completely transformed in the socialist society and the socio-economic content of trade unionism is reflected in a new way. The cooperative movement is gaining a basic significance not only from the economic but also from the aspect in which it would be particularly difficult to compare the role of farmers' cooperatives to any of the cooperative patterns hitherto known. The socialist state is characterized not only by the transformation of previously adopted structural patterns but also by the emergence of social organizations, movements of a novel type and nature which are somewhat reminiscent of the old forms of association but in their overall structure they are clearly different. Lastly, it is the socialist state within which emerge the fundamental organs of the state, the councils, in which social and government functions are coupled and in which the social aspect is gaining increasing significance. Everything said above indicates that these varied patterns of social organization cannot be simply assigned a place under the collective term of the right of assembly and association in the former sense, and that the manifold, ramified forms of association have been filled with a new political content which is not adequately expressed by the term "political liberties".

How can after all the common essential criteria of these rights be found? In socialist states political rights in the strict meaning of the word have been included in the constitutions among the citizens' rights; it is the expression on the one side of the securing for the widest strata of society of those rights which at most had been promised in the bourgeois society, but of which the working masses and progressive forces had been practically deprived. On the other hand it is also obvious that these rights after being implemented, lose something of their significance attaching to them previously, for their implementation ceases to be a matter for which a fight has to be waged, but follows from the essence of the socialist system. The class character of the socialist state involves that the objective trend is not the restriction of these rights, but in the contrary: the socialist state opens up wide possibilities for these rights and promotes the expansion of the forms of their implementation. These rights thus gain a novel social and political purport, but sometimes express the fundamentally new substance in the traditional way. Thus e.g. it might be raised in connection with the constitutions of the socialist states that these do not include the new elements which have come into being. E.g. why do we not speak in connection with the right of association of the new types, such as the right to form social mass organizations, the right to cooperation, the right of social organizations to participate in government activity, which

²⁶ Cf. The Program of the Communist Party of the Soviet Union adopted by its XXIInd Congress. Budapest, 1961, p. 450 et seq. (in Hung.).

are the principal characteristics of the socialist state? The substance of these rights, their common content could be grasped in that they apply to the social and community activity of citizens, determine the forms of organization and other conditions of such an activity. It is no doubt that it is the community which is in their forefront and that is why they are called collective rights. But it has been seen that other rights (like economic, social and cultural rights and even the right of equality before law) contain individual elements also, and it is further clear that the political rights of a social or community character apply ultimately to individuals and provide opportunities for them to participate in public activities.

It may perhaps be assumed that the use of the term community or collective rights is accounted for not so much by the fact that their subjects are certain groups of society, but much more by their object which is a certain social and political activity of the citizens.

Finally citizens' rights classified along this line and called political rights in the wider meaning of the word, comprise certain rights attaching to the person i.e. in which the citizen is placed into the foreground as an individual. This group comprises the right to personal liberty and inviolability, the right to freedom of conscience, the right to privacy and the secrecy of correspondence. This list shows in itself that this group contains rights which originate in the resistance against feudal tyranny, and in the demand for legal security. Thus these rights are determined historically. As to the right to freedom of conscience, its relation to the separation of church and state has already been discussed. It has also been pointed out that this separation was carried out, under the bourgeois conditions, inconsistently and seemingly. The same goes for the implementation of the right to freedom of conscience which comprised, in fact, not more than a formal equality between religions, which was never enforced in some states' practice and did not include, understandably, even theoretically, the right not to profess religious faith, let alone the right to conduct anti-religious propaganda. Several kinds of the above-listed rights assumed a general form in the right to personal liberty and an inviolability. The other rights included within this scope are, in fact, detailed sub-divisions the laying down of which was accounted for by the experiences with feudalism and the efforts to counteract feudal oppression. The state's activity as regards these rights is characterized by measures forbidding the infringement of these rights and by promoting thereby their implementation; but the activity of the socialist state is not confined to these limits. Not only criminal law provisions are needed in this respect, penalizing the infringement of personal liberty but personality must be protected also in other respects. The Hungarian Civil Code e.g. devotes a separate Title to the civil-law protection of personal rights (even the right to equality before law is listed in this context). The Hungarian legal system has extended thereby and through other provisions the scope of the protection of personal rights. This does not affect the primary importance of criminal law safeguards. Even if the relationship between the citizens and the state has undergone basic changes, this cannot mean that the criminal-law safeguards of personality rights would be rendered unnecessary, the fact notwithstanding.

ing that the number of such contraventions of law is decreasing. In the socialist state more far-reaching, more extensive safeguards are provided for the citizens to secure personality rights and such conditions are created in which personality right can freely evolve and individual personality can unfold. The nature of government activity is increasingly tending towards a positive direction as is the case with most types of the other rights of citizens.

As follows from the above citizens' rights may be classified in the socialist legal system in this way:

(a) *Rights directly connected with the socialist production relations*; within this scope:

- i. economic,
- ii. social, and
- iii. cultural rights.

(b) *Rights of a political nature*; within this scope:

- i. right to equality before law,
- ii. rights ensuring the collective social and political activity of citizens,
- iii. rights attaching to personality.

This main division of citizens' rights may serve to an extent as a starting-point for grouping citizens' duties, although it is not suggested that every single right would directly correspond to single duties. The mutual correspondence between the rights and duties of citizens should be examined in the entirety of the institution, in other words the mutual correspondence between the entirety of rights respectively duties should be reviewed.

Citizens' duties may also be divided into two large groups according to their relationships to the socialist production relations, respectively the political superstructure. It should be added at once, that the system of citizens' duties has not yet fully evolved in socialist conditions either; it may be worthwhile to reflect whether some of the conducts — at present regarded as mere moral duties — should be transformed into citizens' duties. The process tending towards this direction is understandably slowed down by the growing consciousness of the socialist citizens. The role of moral obligations is increasing; these become effective rules of community life and principles of conduct without being explicitly laid down as citizens' duties in the socialist legal system. This follows from the new relationship which has been evolving between socialist law and socialist morals. This relationship does not therefore immediately require an extensive definition of the legal category of citizens' duties. Nevertheless a more elaborate legal processing and a certain extension of the scope of citizens' duties appears necessary.

Without going into the elaboration of the complete catalogue of citizens' duties, the large categories, similarly to those of citizens' rights may be outlined. The first main category contains those duties of the citizens which are directly related to the economic basis. Within this category the first place should be allotted to the duty of protecting social property, meaning not only a passive conduct i.e. refraining from injuring social property, but the active one i.e. the duty to protect social property. Within this category come the duties of citizens connected

with work which may be ultimately twofold. They include on the one hand the duty which is laid down in the Constitution in this way: "all able-bodied citizens have the right and duty to work, as a matter of honour, according to their abilities". This wording which is similar to the corresponding provisions of other socialist constitutions, testifies on the one hand to the overall unity of rights and duties also within this context and, on the other hand, the moral content of the duty connected with work. These modes and the conditions of discharging are laid down in separate detailed legislation, which is more than a moral obligation. Another aspect of the duties connected with work is the observance of labour discipline, also in a positive and negative direction. It covers the prohibition of infringing with, and a direct or indirect activity to enforce, labour discipline. The duty of citizens to educate themselves to acquire general and professional knowledge should be finally mentioned in this category. This duty means partly compulsory schooling, partly something more than that, which goes beyond the legal obligation. It is indispensable for the citizens of the socialist state that they be concerned with raising the level of their general education and professional skill. This duty conforms both to individual and social interests. That is why the relating duties have been laid down as citizens' duties.

The other large category of citizens' duties consists of such duties which are directly connected with the political relationship between the state and citizens, the political system of the socialist state. In this category the first place is occupied by that aspect of the enforcement of the socialist rule of law by virtue of which citizens are bound to comply with the laws and other statutes of the socialist state and to observe, in general, the rules of living in a socialist society. This duty affects not only the relationship between the citizens and the state but through its transmission also the relationships of citizens among themselves; this again involves both passive and active conduct, to promote compliance with the law. This overall duty comprises, in a sense, the duties of citizens as a whole, i.e. it discharges a functional role in respect of the rest of duties, because all duties of citizens, excepting the purely moral ones, are laid down in law. This role is similar to that played by equality before law within the scope of the rights of citizens which is both a distinct right and the principle and a pre-requisite of the exercise of other rights. Another duty of citizens is that of participating in public activities which is composed of several constituents, or, if conceived in another way, of several partial duties. Its essence is no doubt the corresponding counterpart of the franchise: the acceptance, when elected, of posts filled by election and the discharging of the duties involved. Last but not least within this category of citizens' duties should be mentioned as a distinct duty, the defence of the country, which comprises the general duty to defend the fatherland and to do military service. The constitutions of socialist countries lay down the duty of the citizens to refrain from any activity likely to jeopardize the interests of the socialist fatherland, and the positive duty to participate in its defence. No doubt that the duties are also rooted in the new-type relationship between the socialist state and its citizens and in the socialist morals.

The basic duties of the citizens in the socialist state may be generalized in that their essence is the duty of protecting the socialist economic, social and political system. This general conclusion has been divided into two large groups, and it was attempted to give a systematic division, within these categories, of the duties of citizens. This was effected more or less along the lines adopted in socialist constitutions in respect of the division of citizens' duties. In some of these constitutions additional duties are provided for which serve, ultimately, the purpose of making clear that these duties are not confined to a mere passive conduct, but require cooperation and activity. Thus in the Hungarian constitution there are provisions on the duty of citizens to strengthen the economic potential of the country and to raise the living standards of the working population. It is thought that such and similar utterances adequately reflect the objectives inherent in citizens' duties. However, these objectives can be attained just through complying with the duties outlined in the above. The general function and the result of the compliance with duties are clear. But as to what single duties of citizens should be formulated and laid down in constitutions to accomplish this end, the constitutional development is even less firmly fixed than is the case with the rights of citizens.

On the ground of the aforesaid, citizens' duties may be classified as follows:

(a) *Duties connected with the economic system of the socialist society:*

- i. the duty of protecting socialist production relations and social property;
- ii. the duty to participate in working activity;
- iii. the duty of observing labour discipline;
- iv. the duty of citizens to acquire adequate general and professional knowledge.

(b) *Duties connected with the political system of the socialist society:*

- i. the duty of complying with the laws and other statutes of the socialist state and with the rules of living in the socialist community;
- ii. the duty of participating in the conduct of public affairs;
- iii. the duty of defending the country.

CITIZENS' RIGHTS AND THE NATURAL LAW THEORY

1. INTRODUCTION

The idea of citizens' or human rights was closely tied up, as shown by the historical evolution, with the natural-law theory. In fact, the concept of "natural" rights claimed to be innate in man, not to be restricted or taken away by any power, is so closely related with the idea of natural law which is "above positive law", and "superior" for allegedly giving expression to eternal justice, that the "discovery" of the conception of human rights in the ideology characteristic of the bourgeoisie in its epoch of ascendancy — the "classical" natural law and the centuries-old justification of the effectiveness of these rights by resorting to natural-law arguments cannot be considered merely incidental. Even after the power of the bourgeoisie had become firmly established, during the decades when the positivist philosophy was gaining ground and was becoming dominant, the dispute with the adherents of the natural-law theory constituted one of the central issues in the constantly augmenting literature on citizens' rights. When natural law had its "revival" at the middle of the 20th century, again natural-law arguments were placed in the foreground of the theoretical disputes on citizens' or human rights. The arguments are centred around the problem whether citizens' rights should be considered as rights accorded by the state, which means that they can at any time be amended, withdrawn or even totally cancelled by legislation, or, on the contrary, should these be appraised as eternal values, "natural" and innate in man which are above all state intervention, and their infringement invariably involves the simultaneous violation of the idea of justice which is the central principle of law. The centuries-old dispute between legal positivism and natural law came to cover the scope of the civic or human rights problems, and the underlying contradiction — if only in changed forms under the impact of changing social conditions — essentially made itself felt both in the theory and the practice influenced by the former.

2. THE HISTORICAL ANTECEDENTS OF THE EMERGENCE OF CITIZENS' RIGHTS

The issue of citizens' rights and the analysis of the connections of the ideas of natural law find themselves confronted — as a result of the juxtaposition of citizens' rights conceived as "natural" human rights on the one hand, and the system of positive law on the other in bourgeois legal writings — in the first place — with the problem whether the interdependence between the idea of human rights and that of natural law does not in fact mean the identity of the two sets of ideas.

In other words the question is, whether the ideas of natural law are (and have always been) just the sum total of the individual's natural and inalienable rights. The question can also be put the other way round: whether the recognition of citizens' (or human) rights cannot be accepted unless through adopting the starting point of natural law. The adherents of the natural law theory firmly believe, in any case, in the alleged identity of citizens' rights and "natural" rights; furthermore they do not usually halt when professing their simultaneous emergence and their common historical course at presenting in a positivist way their similar or identical features but, — stressing the allegedly common roots — include the issue of citizens' or human rights within the "eternal" problems of jurisprudence.¹ The manner in which this problem is resolved is of a major importance not only for the theory but involves momentous consequences also for judicial practice. It is namely obvious that exempting citizens' rights from statutory law and placing them within some "superior" system of values involves in itself opportunities for restricting legislative and other government activity. And when this superior character is coupled with the natural-law system of values based on idealist philosophy, the political and other consequences organically inherent in this system of values must, as a matter of course, also be adopted.

The transformation of citizens' or human rights into statutory law has become in the main a closed process by now; citizens' rights have been included within practically every constitution and subsequent upon the adoption of the solemn U. N. Declaration of December 8, 1948 of Human Rights these have become parts of the generally accepted norms of international law. As against this firmly established statutory enactment of the effectiveness of citizens' rights the partisans of the "eternal", non-statutory nature of these rights are able to evoke only the past when the idea of "natural" rights had been but a pious wish or a moral demand more or less held in respect. The problem may be outlined as follows: should the human demands for liberty, reaching back to the distant past, be considered as veritable rights, and should the laying down of human rights in the major declarations of the 18th century and the concomitant constitutions be interpreted in a way as if they signified a major stage in the course of a two-thousand years' evolution of the ideas of natural law, and the appearance of a Code of natural law?

It is an accepted truth in modern social sciences that in order to be able to comprehend present-day institutions in their entirety, those historical roots must on all accounts be revealed which gave rise to the institutions in question or had determined their initial, first pattern. Thus the efforts of legal scholars aimed at digging out the historical antecedents of present-day government and legal institutions are easy to understand. However, this righteous effort — particularly in the field of legal sciences — is frequently "over-done" which is not always incidental or unbiassed. Many instances are to be found in the modern legal writings

¹ See e.g. *Auer, A., Der Mensch hat Recht. Naturrecht auf dem Hintergrund des Heute.* Graz—Wien—Köln, 1956, p. 11.

when the vindication of existing bourgeois government and legal institutions is attempted by referring to their (allegedly) thousand or at least hundred-year-old existence.² From such a conception the conclusion may of course be easily drawn that institutions which had been proved "lasting according to the standards of history" must be upheld. It also follows from such a tenet that all institutions subsequently emerged or emerging should be assessed, analysed, by resorting to these institutions as starting-points and standards of value. It hardly needs a lengthy reasoning that such endeavours involve in the first place a negative appraisal of the socialist state and law, and the opposition thereto.

Within the scope of citizens' rights this problem is of an outstanding importance because the attacks directed against the socialist system of society use the pretext of the alleged complete liquidation of the "rights born with man", of the "eternal and inalienable rights", in socialism.³ Whether these attacks are or are not well-founded should be proved through concrete inquiries, into the actual implementation of citizens' rights in the socialist society.⁴ This paper, analysing several characteristic features of the historical evolution of citizens' rights, is solely concerned with rejecting the fictitious "thousand-years old development" and with putting in the right place the ideas connected with citizens' rights within the frames of the history of political ideologies.

Marxist—Leninist jurisprudence — as will be discussed subsequently — has adopted the unequivocal stand that citizens' or "human" rights can be conceived of only as a result of the efforts of the bourgeoisie when it had revolted against the restrictions imposed by the feudal society; both the proclaiming of these rights and the pointed separation of the rights of man and citizen furnished an ideological attire for the political and economic endeavours of the bourgeois class.⁵ The first formulations in history of citizens' rights were coupled with the emergence of the bourgeois class, its obtaining and subsequently organizing political power. Thus, if on the next pages we will deal with centuries, long before the emergence and formation of the bourgeoisie as a class, it is because we wish to reveal the unfoundedness of the "retroactive" efforts referred to above, and to dispel certain "traditional" but mistaken beliefs.

As already pointed out, numerous bourgeois scholars profess the view that the

² This is particularly characteristic of the English legal thinking; but the historical concept has become by now a feature of bourgeois social sciences and also of modern bourgeois jurisprudence. (See e. g. *Strauss, L., Naturrecht und Geschichte*. Stuttgart, 1953.) In socialist legal literature see: *Kulcsár, K., Történetiség a XX. század jogtudományában. Kritikai tanulmányok a modern polgári jogelméletéről* (The Historical Concept in the Jurisprudence of the 20th Century, in: *Studies of Criticism on Modern Bourgeois Legal Theory*). Akadémiai Kiadó, Budapest, 1963, pp 89—148.

³ Among the treatises analysing the problem on scientific foundations see e.g. *Loebel, D., The Soviet Procuracy and the International Commission of Jurists*. 1957 Vol. I. No 1. pp 60—105. *Korovitz, M. S., Soviet Conception of Law and Protection of Human Rights. Legal Problems under Soviet Domination*. Vol. I. New York, 1956, pp 27—50.

⁴ See: the relating papers in this volume.

⁵ See the paper by *Szabó, I.*, published in this volume.

roots of citizens' rights should be looked for in ancient Greece or perhaps in the early Christian philosophy which made use of classical traditions in more than one respect. It is held by these scholars, summarized briefly, that the 1789 French Declaration of the "rights of man and citizen" closed a two-thousand years old, uninterrupted evolution, for the idea of human rights had been part of the political thinking ever since the time of Stoa, consequential upon Rome having adopted the concept of equality which is of Stoic origin.⁶

If it is maintained that citizens' rights can be discovered, in embryo, in the most ancient, most primitive and very uncertain appearances of the idea of human liberty, one need not, when tracing backwards the historical path of these rights, stop at the ideology of the Greek slave-city, the *polis* or of the early Christianity. As a matter of fact the embryonic form of the notion that the individual must be somehow protected against the arbitrary conducts of those exercising power, against the abuse of power and, in general, against arbitrary actions, reaches back to very ancient times and may be encountered in its first primitive form in the ancient slave societies.⁷ But the ancient relics of legal development should not be considered as citizens' rights in the modern meaning of the term, let alone as some kinds of safeguards of these rights. These do not formulate a recognized demand, covering the whole or a major section of society, applying to all, but mark the appearance of a concept which followed of necessity, from the primitive structure of ancient society, from a religion-oriented philosophy, according to which human society constituted a part of the divine order. The "law" which regulated in the ancient slave societies the entirety of human coexistence and within this, the mode and means of wielding power was, according to the then prevailing concept a part of the universe-embracing divine idea and was thus primarily of a religious nature. The restrictions imposed upon those in power and referred to above meant, at most, moral postulates and in no way enforceable individual rights for the subjects. This would have been in any case precluded by the autocratic state and social structure of the slave monarchies in the ancient past, in which not only the slave masses were reduced to a status of deprivation of all rights, but also the free strata of society were made dependent upon the monarch.

The historical records of the ancient Eastern slave monarchies, though rather scanty, prompted bourgeois historians and classical scholars to adopt the view, still widely professed today on the ground of which attempts are being made to portray the Greek city-states, as opposed to the autocratic monarchies in the East, as the precursors of the modern liberal state and to present the scope of liberty of citizens in the Greek *polis* as the first appearance of citizens' rights.⁸ To present bourgeois democratic institutions as the successors of classical traditions is — as is the case with so many far-fetched analogies — at variance with the realities of history. The democracy of the slave city-states of Greece — (here we

⁶ See *D'Entrèves*, A. P., *Natural Law*. London, 1951, p. 48.

⁷ *Seagle*, W., *Weltgeschichte des Rechts*. München—Berlin, 1958, pp 329—330.

⁸ See e.g. *Colliard*, H., *L'Histoire des droits de l'homme et du citoyen*. Paris, 1948, p. 5.

use the term "democracy" in the meaning which was attached to it originally in Greece) was a democracy only when compared to the Eastern absolute monarchies. It is a futile attempt to search behind its various institutions the historical patterns of the modern bourgeois state and legal structure. It is also a far-fetched and mistaken effort to make a comparison between the rights of citizens in the capitalist society and the scope of liberty accorded to the inhabitants of the Greek *polis* and to "discover" some kind of identity between the two. In the slave society not only nine-tenths of the population were deprived of rights and were regarded even as not being subject-at-law, but restrictions were introduced also within the class of free citizens which would be quite incompatible with the "classical" bourgeois interpretation of the ideas of liberty and equality.⁹

In the social sciences of the flourishing period of the slave society of Athens, then in the Platonic and Aristotelian philosophies reflecting the decay of the old ideals, (not without some nostalgic hankering for the past "golden age", for the "ideal state") the *polis* meant a system of social organization which was alone susceptible of securing the moral perfection of the individual.¹⁰ It was held that there was not and could not be a contradiction between the objectives striven for by the individual and the state, and consequently the notion that the individual could be the subject of rights enforceable *against* the community, simply could not arise. The legal nature of the sphere of liberty of Greek citizens was unknown in the ideology of the slave society; the rights to be accorded to free citizens were never laid down in statutes and no demands were ever voiced to this effect. Moreover, the "human right" nature of liberties as practised in the *polis* cannot be vindicated by resorting to the conception of test-cases as adopted in the Common Law system either. In ancient Greece namely an idea similar to the modern concept of individual rights had never evolved; although judicial decisions passed in civil actions for one of the parties amounted, as a matter of course, to certain economic or personal advantages for the party concerned, but these never had a general effectiveness in deciding upon subsequent actions. They were not leading cases, but rather involved special benefits, and not a requirement to be claimed by all.¹¹ Subsequent upon the Persian wars a major change was ensuing in the Greek city-states, particularly in Athens, directed at the gradual emancipation of the individual. This process logically followed and was concomitant with the disintegration of the *polis* structure and with the increasingly perceptible expansion of foreign and domestic forces which were all out to break down the limitations characteristic of these states. The Sophists — openly advocating the right of the more powerful

⁹ As it is known those who have not married and those who have concluded marriage after a certain age-limit were punished in equal measure in Sparta. In Miletos, women were forbidden to drink wine, the manner of women's hair-dressing was regulated in Sparta; the inhabitants of the Athens were forbidden to take more than three suits of clothes on a journey, etc. (See: *Seagle* op. cit. p. 22).

¹⁰ *Plato*, *Politeia* VIII. 544. e. 434. d: *Aristotle*, *Politika*, III. p. 1280.

¹¹ *Jones*, W., *The Law and Legal Theory of the Greeks. An Introduction*. Oxford, 1956, p. 151.

— sharply criticized the existing state and social structure, the *Kynikos* proclaimed the idea of cosmopolitan statelessness, and in the system of thoughts of the Stoa the city-state was replaced by the idea of a world-state embracing the whole of mankind. Man, in these concepts, grew over state boundaries insofar as by his substance, basic nature, he ceased to be a citizen and became a member of a superior, world-embracing empire, that of the Idea (Logos). The adherents of the ancient origin of citizens' rights usually think to find in this the decisive arguments for the justification of their concept.¹²

The distinction made by Stoa between the existing world, which was imperfect and the imaginary one, which was ideal, involved namely the seeds of conflicts between the two. There was thus a theoretical possibility that the individual — in compliance with the laws of Logos — would oppose the laws expressing the will of the state, or the persons who exercise state power.

When the history of the ancient Greek philosophy and, within this context, the emergence of the natural law philosophy is examined, it becomes clear that the above phenomena do not amount to the first appearance of the idea of citizens' or human rights. There is no doubt that the intellectual process which, in keeping with the social changes outlined in the aforesaid, resulted in the reappraisal of the Greek idea of nature and transformed the entire social thinking, reached its heights in the philosophy of Stoicism.¹³

The comparison between state structure and the cosmic order which, as professed by Pythagoras and Herakleitos, did not contain any inherent conflict between the two, appeared in the philosophy of the Sophists as the distinction or even the contrasting between the two, and involved the possibility of criticizing the entire state legislative activity by evoking the cosmic, natural order.¹⁴ But the central issue for the problem with which this paper is concerned is, that in this somewhat revolutionary-tinged natural law it was not the individual and the state which were opposed, but the eternal moral order of the world — as expressed by the laws of the *physis* — was contrasted with the man-made structure as embodied in the state. And even if the idea of nature parallel with the increasing conquest by the Sophistic philosophy — was assuming subjective characteristics, the gradual approaching of the ideas of nature and human nature did not bring about the identification of the contrast between *physis* and *nomos* with the contradiction between the individual and the state. This could be the less so because the attacks launched by the Sophists (and others who were dissatisfied with the existing order) was not directed against the state as such; those who continued to believe in the *polis* to be a model and the expression of the moral world-order, were endeavor-

¹² Verdross, A., *Abendländische Rechtsphilosophie*. Wien, 1958, pp 45 and 235.

¹³ Ibid. p. 15.

¹⁴ On the socialist legal theory's assessment of the divergencies between natural and positive law see: Péteri, Z., *Az „újjáéledt” természetjog néhány kérdése a második világháború után. Kritikai tanulmányok a modern polgári jogelméletéről*. (Some Problems of the "Revived Natural Law" after the Second World War, in: *Studies of Criticism on Modern Bourgeois Legal Theory*). Akadémiai Kiadó, Budapest, 1963, pp 251 — 300.

ouring, through replacing the faith in the Absolute with the faith in man, and through considering moral norms regarded previously inviolable as relative, to provide a philosophical justification of their attempts to seize state power. Even when evoking the norms of the *physis* (which were held to be "just by their very nature" because these "were in harmony with human nature") they expressed misgivings as to the existing social structure and statutes, this did not amount to admitting any legal titles claimable against the state. Similarly, whatever contradictions or possibilities of conflicts may exist between the world-embracing Logos and a fundamental principle of natural law, and the state-enacted legal provisions: the obvious revolutionary conclusions were never drawn in the Stoic philosophy. The objectives pursued by the Stoa never included the elimination of the difference between the legal status of free citizens and slaves, or between natives and foreigners; given the ideal concept of the empire of Logos the conclusion was drawn that the individual's social position was negligible, of a secondary importance, and an acquiescence in it, the peaceful acceptance of state acts was proclaimed. If thus the contrasting of the state's law and the system of norms found in natural law which was considered as superior, being in harmony with human nature, involved for the Stoa the acceptance of certain values and norms attaching only to human personality and inaccessible for the state, this did not include the revolutionary demand of opposing statutory law and did not amount to recognizing any right admissible against the state.

The philosophy of early Christianity made use of the Stoic idea of an eventual conflict between the two world orders, the two systems of values. It was the first time that the State was considered in this philosophy as a temporary, earthly institution, the power of which should be restricted by the Church, the representative of the other, higher-ranking world. The parting of state and individual, the delimitation of their interests and objectives which found first expression in the Stoic philosophy, appears in a more marked form in the teachings of the Christian Fathers of the Church.¹⁵ In the philosophy of early Christianity, man, as the member of the divine empire, is subjected to the state only to such an extent to which it is striving to establish the divine empire in the earth, and to which the common weal (*bonum commune*) represented by the state is compatible with human nature. Man, namely, being the citizen of the divine empire has his innate human dignity (*dignitas humana*) which, as an inalienable and unchangeable value exerts a restrictive effect in respect of all external influences, those of the state included.¹⁶ Though the set of ideas professed by the Stoa and early Christendom had, no doubt, meant a step forward in the historical path of attaining independent human personality, neither the Stoa nor the Christian philosophy provided a ground to recognize citizens' or human rights, i.e. of claims which were enforceable or could be implemented through legal means. The division between the community and the individual did not appear either in the Stoa or the early

¹⁵ *Augustinus*, *De Civitate Dei*. XI. c. 1.

¹⁶ *Thomas Aquinas*, *Summa Theologica*. II. 2. qu. 58. Art. 9.: *De regimine principum*. I. 14.

Christian philosophy in a legal context, as a problem of law. The conflict between the two sets of values — due to the specific nature of the sanctions attaching to the Logos or the laws of nature — is not one between two legal systems, two effective laws: state activity directed towards individuals was limited not by legal but by moral, religious or other considerations — in several instances more efficiently than could have been done by resorting to law.

During the epoch of feudalism the issue of individual liberties was raised in a somewhat different context as compared to the slave society. In that age, economic dependence was not accompanied by a complete absence of personal liberty. The serf, provided he had complied with his obligations imposed by the feudal system, was, in principle a free person and was in the main also free to dispose of the produce of his work. Perhaps it is due to this fact that several bourgeois scholars came to the conclusion that “medieval legal order was determined to a far-reaching extent by the idea of liberty”.¹⁷ In effect, even if, under the impact of Christianity, the idea of human equality was gaining some ground in Europe this did not involve the doing away with existing inequalities, political and economic, the recognition of personal liberties or let alone their extension to the whole of society. As regards the place of citizens' rights the changes brought about by feudalism (the fact notwithstanding that these marked a major progress in history) did not result in social changes under which the idea of citizens' rights could have matured. Society continued to be built on the principle of undisguised inequality, although serfs' lives were accorded a larger protection as compared to the slaves, but they had practically no recourse against the unilateral decisions passed by the seigniors. The authority of the seignior coincided, in numerous respects, with the exercise of the state's coercive power and the economic subjection of the serf to his seignior implied also a political and constitutional subjection. The relationship between the two classes was determined, as a matter of course, by the seigniors having the authority to decide in disputes with their serfs. There can be little doubt that under such conditions there could not be question of an equality of rights; such generally effective “human” or citizens' rights, which would have benefited the serfs and other oppressed strata of feudal society, could not evolve. Still, the repeated references in medieval legal sources to ancient, “common” rights play, at first sight, a misleading role and lay behind numerous misunderstandings or deliberate misinterpretations.

It is clear that natural-law ideas, the faith in the divine origin of the feudal kingdom, and the belief of bilateral obligations rooted in the religious nature of royal power, strongly ethics-coloured, left a deep impact on the whole medieval thinking. The universalist endeavours of the Christian church, having adopted the ideas of natural law as its “official” philosophy and disseminating these, found a strong support in the universalist nature of natural law, which was of a Stoic origin;

¹⁷ *Mayer-Maly, Th., Zur Rechtsgeschichte der Freiheitsidee in Antike und Mittelalter. Österreichische Zeitschrift für öffentliches Recht. VI. — 1954, p. 400.*

this impact was further enhanced by the traditions of the widely ramified organization, legal system and culture of the disintegrated Roman empire which were operating in the same direction.¹⁸

This mainly cosmopolitan influence was supplemented on the other side by the barbarian traditions of the feudal kingdoms emerging on the ruins of the Roman Empire. The feudal monarch was merely a "*primus inter pares*" who, owing to his personal relationships to his vassals — which were characteristic of the feudal system as a whole — is held responsible for his acts and is subjected to a "common law" binding upon both seigniors and liegemen.¹⁹ It is of a secondary importance whether this generally binding law is the natural law of Christianity or rather — as was the case in England — the functions of traditions were pointed out by laying emphasis on the ancient character of these rights. The gist of the matter is found in the recognition of the superior nature of these rights which constituted a basic feature of the medieval mind, and is an outstanding issue for appraising and interpreting the ideas on liberty in the Middle Ages.

The recognition of the superior character of the "common law", its nature as binding both upon the monarch and his vassals, provided a basis of principle for the protests against the abuses of power on the part of the monarch and for the settlement of the conflict of interests between the king and the nobles. As it happened, the evoking of "ancient" rights, the enforcement of these rights against the opposition of the ruler proved to have been one of the most frequently deployed weapons of feudal nobility. It is obviously not the medieval works written to theoretically vindicate the right of revolting against oppression, against the rule of "tyrants" which are worth pointing out in analysing the problem of this paper,²⁰ but the fact that — by exploiting the temporary weakenings of royal power — the nobles succeeded several times to have their demands laid down in charters, documents, issued by the monarch, and to compel the ruler to accept these in a solemn form. The natural-law tinge of these outstanding sources of medieval law, the wording directed seemingly at a general effectiveness, frequently gives (or used to give) rise to false illusions on some rights of citizens assumed to have been recognized as early as in the Middle Ages.

¹⁸ Kagan, K., *Three Great Systems of Jurisprudence*. London, 1955, p. 45 et seq.

¹⁹ This idea, which has been retained in its clearest form in the Anglo-Saxon Common Law systems, is the product, according to some scholars, of Germanic barbarians, the social system whereof regulated personal independence by the guarantees of a generally recognized "common" law. (See: Keller, R., *Freiheitsgarantien für Person und Eigentum im Mittelalter*. Heidelberg, 1933, p. 32; Edmunds, P. *Law and Civilisation*. Washington, 1959, p. 325.) The purpose of this reasoning is obviously a one-sided expropriation of the origin of human rights which was a rather common occurrence in legal writings at the turn of the century. Its grounds are, to say the least, very doubtful: for to attribute the idea of liberty to one people is at variance with the facts of history and, on the other hand the society of Teutonic barbarians was governed by such primitive rules of social co-existence which could hardly be judged as reaching up to the standards of law as it is commonly understood.

²⁰ See e.g. *Salisbury, J., Policraticus*. Ed. by C. C. J. Webb, Oxford, 1909. The reasoning is: as it is lawful to kill the branded enemy of mankind, it is also lawful to kill the tyrant. VIII. Chap. XVII.

Did the famous charters of the feudal epoch really contain citizens' rights as the term is understood today? A negative answer is mostly found even in bourgeois jurisprudence to this question by now.²¹

Under Article 39 of the famous Magna Charta e.g., so frequently evoked by the citizens of England in the course of their constitutional struggles, as the aggregate of their ancient rights, the "freeman" was protected against unlawful arrest, detention, expulsion and other restrictions upon personal liberty. But at the time when the Great Charter was issued the notion of "freeman" was restricted to the nobles, barons of the realm; consequently Article 39 so often referred to by the bourgeoisie covered only the liberties of the barons and not of the whole population, just as the Great Charter itself served merely to safeguard the barons' liberties and was, in effect, a pillar of the feudal system of government.²² Those peers who were charged with adjudicating the infringements of personal liberty belonged to the feudal nobility, and the "law of the land" on which such judgements were based meant the feudal legal system. It was only in the course of the constitutional struggles of the English bourgeoisie, in the service of attaining the objectives laid down by this class, that the Magna Charta was eventually transformed into a brake upon the arbitrary exercise of royal prerogatives, into a veritable symbol of the liberties of the whole population.

The same may be said of the famous letter of privileges of the Hungarian nobility, the Golden Bull of Hungary, issued first in 1222, the wording of which might easily be construed — similarly to the Magna Charta — as if it had contained some generally valid liberties. In fact, the Golden Bull of Hungary was equally a document securing privileges for the peerage, the provisions whereof were made to appear only subsequently, through embellishing interpretation as if they had had general validity.²³

The very absence of general validity, that of the comprehensive and recognized character encountered in the feudal charters meant not only the relegation into the background of the universal requirements of natural law, but also reveals the specific nature of these letters of privileges as sources of law. It is namely obvious that these Charters cannot be considered as sources of law taken in the modern meaning of the word. These are not generally valid normative acts but just the safeguards of the nobles' rights against eventual encroachments by the monarch, in the form of a contract so characteristic of the feudal society. Just as the legal relationship between the vassal and seignior is established in a specific contractual pattern, in the feudal charters the principal part is the outcome of the agreement between the king and the nobles — exacted in almost all instances through resorting to an overwhelming force. Thus, there can hardly be any doubt that the privileges laid down in the charters applied only to the nobles, parties to the agreement and

²¹ See e.g. *McIlwain, R.*, *The High Court of Parliament and Its Supremacy*. London. 1910. p. 13; *Holdsworth, W.*, *A History of English Law*, II. p. 207.

²² *Seagle*: op. cit. p. 314.

²³ See *Egyed, I.*, *Az emberi jogok biztosítása Magyarországon* (The safeguarding of human rights in Hungary). Pénzügy és Közigazgatás, Nov. 1947.

for this reason they are devoid of a major constituent of citizens' rights, viz. universal effectiveness.

Why is it after all, that numerous bourgeois scholars have remained adherents of the fictitious antique origin of the rights of citizens — despite the obviously mistaken analogy and the equally obvious historical facts to the contrary? The answer revealing also the natural-law roots of referring back to antiquity is that this method aims at raising the citizens' rights to the level of a special system of values, above the reality of law, endeavouring to furnish a "superior" philosophical explanation of the interests protected by these rights. Whether in this system of values norms deduced from an idealized historical process, or ideas of justice based on divine will, the "order of nature", or perhaps human reason are adopted as standards of value: is of a secondary importance for the assessment of the whole ideological attempt. The main thing is as will be shown through investigating the appearance of the problems connected with human rights in the "classical" theory of natural law in the 17th and 18th centuries as well as through its subsequent role in the history of political doctrines, that attempts are made to detach citizens' rights from the material of statutory law and to raise these above positive law, and thereby to divide legal material into a positive and "superior" legal system which is so much characteristic of natural-law philosophy.

3. THE IDEA OF CITIZENS' OR HUMAN RIGHTS; THE NATURAL LAW THEORY OF THE 17TH AND 18TH CENTURIES

In the foregoing part those concepts were outlined the partisans of which attempted to trace back the origin of citizens' rights to the epoch preceding the emergence and of obtaining power by the bourgeois class. Clearly this approach cannot be described as entirely groundless insofar as it tries to include the idea of citizens' rights within a comprehensive set of problems dealing with the internal contradictions inherent in all social formations based on exploitation of man by man. In fact, if the roots of the problem of citizens' rights are thought to be found in the opposition between the individual and public power and in the social demand that individuals should be protected against the arbitrary actions of those who exercise power in the differing interests and the concomitant possibility between individuals and public power, then it becomes obvious that the problem can be traced back to ancient times. In a certain, vague context, theoretically, the prerequisites of discovering such a separation may have been present as soon as the first state, a power organism as distinct from society, had become established. In reality — as pointed out several times — a long, centuries-long process was leading to this recognition because in the course of the evolution of human society, as shown by the results of modern researches into antiquity,²⁴ the individual reached its independent existence in society through various stages of community life and the related, collectivist way of thinking, and thus approached the natural

²⁴ Bowle, J., *Western Political Thought*. London, 1954, pp 15—17.

law and individualist concepts on a philosophical scale. Even if there had been conflicts between the community or state power (protecting the interests of monopoly groups and thereby political power) on the one hand, and the interests of the individual on the other in the slave society, like in the Greek *polis*, this cannot mean the recognition of the ancient origin of citizens' rights.

The opposition between the individual and the community must not be identified with the appearance of this opposition in a given epoch, determined in form and substance by the then prevailing social conditions i.e. with the idea of citizens' or human rights. This opposition and the problem of the sphere of individual liberty seeking protection against interferences by public authority has remained the key problem of all social formations based on exploitation of man by man and have accompanied these through their entire historical course. To such an extent — but *only* to such an extent — there is truth in the conclusion of a bourgeois scholar, that the history of human rights is also the history of human liberty.²⁵ But the notion of human or civic rights has a narrower purport than the general concept of liberty. The idea of liberty in its most general form, i.e. the recognition of the opposing interests of the individual and public power and the demand of protecting the individual goes back in fact to ancient times. But to identify this with civic or human rights would hardly stand up to criticism.

The very fact that there cannot be question of citizens' or human rights — as follows from the idea of universality of the concept of law — unless these are laid down in appropriate legal provisions, indicates the bourgeois origin of the problem. It must be admitted that the bourgeois class was the first which strove consciously in the history of class-societies at lending the semblance of general human interests to its specific class-interests;²⁶ it was this class which first formulated in a form, claiming general validity the opposition between the individual and public power and the related demand for safeguards to be accorded to the individual. This demand necessarily remained an ideological requirement, expressing the necessity of social progress, and became a legal claim only after the expansion and subsequent victory of bourgeois revolutions. By that time it was transformed into endeavours by the victorious class to formulate and enforce the demands, which meant the theoretical foundations of its power, as legal provisions binding upon all members of society. This claim of universality, this claim of the necessity of protecting the liberties against all and against every encroachment had been non-existent prior to the emergence of the problems of "human rights" expressing the bourgeois demands for liberty. The rights and privileges attaching to certain members or eventually small groups of society were effective only within a particular sphere. The idea of rights due to all individuals through their being men,

²⁵ Planitz., H., Zur Ideengeschichte der Grundrechte. In: Die Grundrechte und Grundpflichten der Reichsverfassung. Berlin, 1930. III. p. 597.

²⁶ This thought of Marx can be discovered already in his reflections on the sessions of the Rhine Landtag; as to its full analysis, see: Marx's letter to Bolte in November 1871. *Marx — Engels: Selected Letters*, Budapest, 1950, p. 319. (In Hung.)

against the state and the community, could arise only after human personality had become, at least in theory, free, when man got rid of the legal status of slaves (not being regarded as persons), then of the serfs (who were soil-bound accessories of the land), and when thus man became capable of undertaking rights and obligations. It was not an incidental occurrence that the determination of the scope of citizens' rights had been preceded by the proclamation of the idea of human equality. Only upon this ground, having adopted this prerequisite, could the natural-law code laying down the "rights of man and citizen" be drawn up, and the first crystallized formulation of human rights come into being.

Although the bourgeois class was approaching towards the seizure of power and launched revolutionary movements in Europe, this process progressed at a strongly different pace even in the leading European countries, owing to the state of domestic class-relationships, and in no small measure to the international events by which it was strongly influenced. While in England the successive bourgeois movements had led, in the course of the revolutionary events of 1688—1689, to the adoption of the Bill of Rights, to the undisputed triumph of the bourgeois-dominated Parliament and to a major limitation of the Crown's power, in the leading countries of the Continent, like in France and Spain, the first attempts of the bourgeois class brought about the contrary effect: absolute monarchy was strengthened and in the territories belonging to the Holy Roman Empire the establishment of unitary national states in the form of absolute monarchies and the elimination of feudal particularism remained a task for the future, although in numerous German principalities the absolutistic system of government had been previously introduced. All these had, of course, an effect on the demands of the ascending bourgeoisie, for these demands had to be enforced against an absolute monarchy which was at the peak of its power. Theories providing the philosophical justification for the economic and political objectives of the bourgeois class and investing these with the garment of justice made their appearance at an early period in Europe, at the time when feudalism was already on the decline. The problem of the "best social system" and of the "best state" (the roots of which reach back to Plato and Aristotle) found their way into series of more or less Utopian ponderings and systems of ideas. These concepts brought to light the specific demands of the bourgeois class in frequently mythical but increasingly marked formulation.²⁷ The demand of extending liberties, of recognizing equality, of establishing a social system which would provide effective safeguards against the arbitrary exercise of power, are constantly recurring, generally characteristic features of political treatises published in the ages of Renaissance and Enlightenment.

The first bourgeois attempts to establish a distinct system of ideas in order to criticize the feudal system of society and to justify the bourgeois form of govern-

²⁷ It is sufficient to refer e. g. to the well-known Utopian works by Campanella, Th. More and Cabet.

ment resorted to natural-law concepts. The concept was not novel, but natural law as professed by the ascending bourgeois class meant a basically new system of thoughts. This was namely the first philosophical trend which made itself independent of theology and which pursued the objective to explain the phenomena of the lay state and law. This fact is not contradicted by the fact that numerous representatives of bourgeois natural law were permeated by a more or less Christian spirit. Even Grotius held the tenet that the idea of natural law was planted by God into man's soul. But this natural law — in sharp contradistinction to medieval concepts — was both in its character and its social function the natural law of the layman, a legal system which was essentially free from the dominance of theology. It was centred around man and human reason; from this the adherents of natural law deduced those "natural" rights of man which are unconditionally due to him being a man and of which he cannot be deprived by any power be it secular, ecclesiastical or even divine.²⁸

"Classical" natural-law theory was not homogeneous. But despite the different contents serving various political objectives, all varieties of the philosophy of the ascending bourgeois class agreed in attributing some "natural" rights to man, and all contemporary social system, political and legal institutions were measured against the standard of the implementation or non-implementation of these rationally deduced rights.

Thus, the natural-law foundation of the individual's rights and liberties would not be a new concept in itself for the notion of individual liberty was based on natural law considerations both in the Stoa and early Christian philosophy. What constituted a revolutionary novelty in the bourgeois theory of natural law, was the emphasis laid on the *legal* nature of the sphere of liberty which means that the individual must have certain rights, by nature's command, which are to be unconditionally respected by public authorities and which are effective against these, against their volition as well.

It is quite understandable that this doctrine played a function in the fight of the bourgeois class waged against absolutism, for it furnished a weapon by which the most significant demands of this class could be made to appear as commands inherent in nature itself. The practical implementation of these claims could not be effected everywhere and simultaneously; it must be kept in mind that there is a long way leading from the formulation of demands to carrying these out in practice. Even so their import was tremendous because the aspirations to freedom previously conceived in an ambiguous way and vindicated by the rather vague idea of justice were placed on the ground of the only correct and just law, natural law.

The fact itself that man was placed by the scholars of natural law into the centre of their system amounted to a revolutionary change in the entire social thinking. Although the ideas on nature of the new bourgeois philosophy were rather nebulous and even confused, these meant a milestone in the history

²⁸ Grotius, H., *On the Law of War and Peace*. Budapest, 190, Vol. I. p. 175 et seq. (In Hung.)

of human thought for these were the first, however imperfect, attempts to "humanize" science which henceforward would not look for the causes of phenomena in external, inaccessible forces but in man himself and in nature surrounding him.

In order to explain the existence and limitations of the power of the state on the one hand, and the scope of "natural" rights accorded to man on the other, the adherents of the natural law theory resorted to the long-existing specific legal institution of the contract. According to the tenets of natural law the "social contract" had been the organizing power with the help of which primitive society was capable of forming states, in other words, of regulating human co-existence. Under the "social contract" both contracting parties, the individual and the government acting on behalf of the community were entitled to rights and bound to observe obligations.

The idea of the social contract was attributed for a long time to J. J. Rousseau who gave in his well-known work, "Contrat social" perhaps the most detailed outlines of the social contract theory. It has become an almost generally accepted truth by now that neither Rousseau's theory, nor Locke's teachings which had served as a direct inspiration to it, can be regarded as entirely original, and the seeds of a theory tracing back social structure to an ancient contract must be looked for in a more distant past. The views adopted by socialist jurisprudence on the one hand and bourgeois scholars on the other is separated essentially by the same difference which has been mentioned in connection with the origin of citizens' rights. The majority of bourgeois scholars are inclined to seek the origins of the bourgeois social contract in the primitive past, or even in pre-historic ages. In the Marxist-Leninist social sciences the centuries-old concept of contract is assessed as a form which used to cover different contents as required by the various ages of history. Thus, obviously the concept according to which the contract between the suzerain and the subjects should be traced back to the Bible, citing divine promises made to Noah or Abraham, which was conceived during the Middle Ages and was adopted by writers in the age of Reformation, (still encountered today) cannot be accepted.²⁹ In the same way the germs of the view holding that law is the outcome of an agreement between men could equally be "discovered" in the slave society: several sophists (e.g. *Licophon*) maintained that law was an agreement aimed at safeguarding mutual rights and in Plato's *Politeia* emphasis is laid on the agreement character of law and other rules of conduct.³⁰ That contract was a means of reconciling individual interests was widely professed in the Roman slave society and Roman law.³¹

An interpretation of the concept of social contract as an agreement which brings about a social balance between the opposing power-groups of society is first encountered in the well-known views of Marsilius of Padova — a relentless fighter against the efforts of the church to extend secular power.³² Marsilius, though

²⁹ Kagan: op. cit. pp 94—95.

³⁰ Plato: *Politeia*, II. 358.

³¹ E.g. Cicero: *De republica*. I. 25.

³² Cf. Friedmann, W., *Legal Theory*. London, 1953. Third ed. p. 38.

advocating the unlimited power of secular rulers which should extend also to the church in the territories under their jurisdiction, professed that the people was the source of all political power and consequently power can be exercised only on the ground of a mandate given by and in agreement with the people. This was, in the main, the revolutionary idea which was adopted also by other thinkers fighting against feudal oppression, and which later was to constitute the principal tenet of the bourgeois natural-law theories. Thus, when the English John Locke, drafting the philosophy of the ascending bourgeoisie in the most unequivocal way, made the idea of the "social contract" one of the pillars of his system, he adopted an already evolved idea, moulded by the vicissitudes of centuries-old social evolution as required by the prevailing efforts directed at political power. Similarly, the raising of natural law above the rank of statutory law cannot be regarded as an entirely new idea in the theory of Locke and other adherents, for the view had been professed as early as in the Middle Ages that rulers were also bound by certain ethical principles and values.³³ But Locke built up, from these more or less crystallized and adopted ideas a huge, comprehensive and coherent system, which, though self-contradictory in some respects, constituted the foundations for the doctrine of inalienable human rights. Locke's theory, by lending a new interpretation to the concept of social contract gave not only a powerful weapon into the hands of the people fighting against absolutism to overthrow the outworn system of government, but also placed the objectives pursued by the ascending bourgeois class on a firm theoretical footing and thus prepared the way for the evolution of parliamentary government and bourgeois democracy.

The social contract theory of Locke is based on coupling the economic and political demands of the bourgeois class with the natural, inalienable rights. The idea of contract, which is common in all the varieties of the "classical" natural-law theories, presumes the existence of an ancient "natural" state of society which meant — although assessed in widely different ways — a completely unrestricted coexistence of human beings, not limited by any public authority. Mankind was — as professed by the theoreticians of natural law — raised from this society through the social contract and was guided on the way of reestablishing public power having independent existence of the single members of society.³⁴

Locke regarded social contract as a means of upholding perennial rights which are the due of all individuals. By entering into such a contract men agree upon establishing a political community (*pactum unionis*) and subject themselves voluntarily to the power of the community (*pactum subiectionis*). In Hobbes' theory of social contract only the *pactum subiectionis*, the agreement of submission was discussed whereby all natural rights of the subjects were conferred upon the sovereign; Locke, on the other hand, by adopting the dual meaning of the social contract, intended to emphasize the idea that individuals who constitute a political

³³ As shown in bourgeois legal writings, Locke adopted the views rooted in the medieval construction of natural law from Hooker. See: *Friedmann*: op. cit. p. 44.

³⁴ *Grotius*, H., op. cit.; *Hobbes*: De cive, 1642, *Rousseau*: Contrat social, 1762. etc.

society bring about a voluntary union through entering into contract, and subsequent decisions on all important issues connected with their social coexistence pertain to themselves (i.e. to the voluntary union of individuals), or to the majority of society.³⁵ The duty of the majority or of the government representing the majority's power is to protect individual rights, in the first place the right to life, freedom and private property, but (and Locke's natural-law theory is inconsistent at this juncture) the rights claimed to be inalienable and "natural" of the individual may be revoked through a majority vote.

As it is seen, Locke, the loyal son of the English bourgeois class just then waging a fight against the Stuart-absolutism under the leadership of the Parliament, subordinated even the concept of natural rights to the parliamentary majority principle, in the interests of the unlimited power of the "majority" i.e. the Parliament. The same problem — perhaps even in sharper formulation and, consequently even more at variance with the natural law theory — appears in Rousseau's social contract theory. While standing for a firmly established central power serving the community of citizens, Rousseau made simultaneous efforts to uphold the fictitious tenet of the individuals' "natural" and therefore inviolable and inalienable rights, and this led to numerous contradictions in his theory. It was thought by Rousseau that a return to the ancient, natural state of society, the restoring of the complete liberty and equality taken away by civilization could be accomplished by making a social contract (*pactum unionis*) under which although the members of society waive their natural rights for the benefit of the state which is the embodiment of the community's will (*volonté générale*) but these rights are restored to them in the form of citizens' rights.³⁶ Rousseau was unable to give an adequate answer to problems arising from the unavoidable conflicts between complete and indivisible popular sovereignty and individual rights. The advocating of liberty and equality, the placing into the foreground of direct democracy (as against the parliamentary-representative system) and of laying stress on inalienable human rights nevertheless lent a tinge to his theory as if it were a coherent, unequivocal expression of individualistic ideas. And despite the fact that even bourgeois science became aware at a later date of the lack of ground for such an interpretation, Rousseau's name became inseparable from the idea of citizens' rights in the course of the triumphant advance of the free enterprise in the aspirations of the victorious bourgeois class.

The comparison between the social contract theories of Locke and Rousseau are worth attention also because therein we find the roots of the two principal trends in natural-law theory which even now basically determine the structural safeguards of citizens' rights in the bourgeois society. While the leading principle in the British system of government is parliamentary sovereignty in which all rights and liberties are dependent on Parliament's will, the main characteristic

³⁵ Locke, Two Treatises on Civil Government. Book 2, 96.

³⁶ Rousseau, The Social Contract, Book I. Ch. 6., Budapest, 1956. (In Hung.), p. 98 et seq.

feature of the American and several other systems having a natural-law-type Bill of Rights is the idea of "limited government", which means a government structure which, in the interest of more effectively safeguarding citizens' rights, avoids the concentration of power in any of the government agencies.³⁷

When now we examine the impact of the natural-law theory of the ascending bourgeois class on the formation of citizens' rights, we will discover it not only in the formulation of the concept of rights "which are all men's due by their very nature and prevail independently of public authority" i.e. in the theoretical foundations of the problems of citizens' (human) rights. It is much more important that the natural-law concept appears to have been the source of the tremendous intellectual motive force by which bourgeois revolutions were led. The same motive force continued to leave its imprint on the evolving bourgeois legal systems after the victory of the bourgeois class, even in the period when that class has fully accomplished its objectives and introduced organizational safeguards to maintain them.

4. THE ROLE OF NATURAL LAW IN TRANSFORMING THE CONCEPT OF CITIZENS' RIGHTS INTO AN INSTITUTION OF STATUTORY LAW

In the preceding pages references have been made to the role of natural law, the characteristic philosophy of the ascending bourgeois class and of the economic, political objectives of this newly-emerged class on formulating human or citizens' rights. It was thus no mere chance that the history of the citizens' rights — or civil liberties as these are understood today — started in those countries where the "third estate", the bourgeois class had become an independent economic and political force at an early period. This inherent feature of historical development is lent a special interest by the very limited prevalence of natural law, the characteristic philosophy of the ascending bourgeois class in the birth-place of civil liberties, England. This phenomenon is accounted for by the more rapid development of law in England than was the case in the countries of the continent. In the leading countries of the continent the road to the bourgeois constitutional state was leading through the intervening age of absolute monarchy, and the assembly of the privileged classes, the military and the clergy, was not directly transformed into a constitutional organ representative of the whole people: in England, owing to the more rapid pace of development the assembly of the nobles was directly changed into Parliament, the representative body of the people, and the feudal state was transformed into a constitutional state, a limited monarchy, without any intermediary stage of evolution. The reason for this is that the feudal system had never been as powerful and dominant in England as on the continent: on the one hand the monarchs in England had successfully opposed the expansion of feudal particularism through applying the common law which was effective in the whole territory of the realm, and through establishing common-law courts with

³⁷ "A government of laws and not of men."

a country-wide jurisdiction. On the other hand, the bourgeois class — ahead of continental evolution by about 100 years — had successfully opposed the growth of the overwhelming force of the monarch. Due to the existence of common law and common-law courts the evolving of “natural rights” was rendered unnecessary³⁸ and the fight waged by the newly emerging bourgeois class against the oppressive rule of the Stuart Kings was conducted under the slogan of defending existing legal institutions. In the course of this fight English lawyers did not resort to natural law as the leading watchword but “the ancient customs of the realm” and judicial cases as the outcomes of reason were invoked. The rights and liberties for which the great majority of the English people waged its fight under the leadership of the bourgeois class were not considered as universal requirements pertaining to all nations and all ages, and were reaffirmed not as such after victory had been achieved. These “ancient” rights and customs — even when their content and interpretation underwent subsequently fundamental changes — were held explicitly as the liberties of the English nation, which were due as automatically to the Puritan and other immigrants fleeing from religious persecution to America, as emphatically they were denied to the nationals of other countries. Thus, in this context, English civil liberties never showed a universal, and even when they served as models for the ascending bourgeois classes in the European continent in subsequent centuries or as objectives to be attained, due to their decisively national character they never became as powerful motive forces, inspiring watchwords, acceptable for all nations, as did the declarations on citizens’ rights proclaimed at a later period.

As it is seen: the idea of civil liberties which accompanied the social advance of the bourgeois class and expressed its objectives became first a reality in England although without pretension as to universal validity, applying to all individuals of all ages, but restricted only to the free citizens of England. The first solemn proclamation of the individual’s fundamental rights is tied up with the revolutionary movement of the American settlers revolting against the British mother country; these movements were influenced not only by the events of the British constitutional evolution but also by the philosophical tenets on “natural” human rights originating in France. This was thus a complex interrelation which made the idea of human rights the common intellectual product of the western countries starting earliest on the road of development.³⁹

The seeds of the American history of civil liberties are usually discovered in those “colonial charters” in which the rights and duties of the founders of the English colonies in America were laid down. These charters, executed in the form of royal deeds of gift awarded to individuals specified by name and their progenies, landed property and the concomitant rights of use and disposal, — varying as required by the volume of the gift. It was laid down in these royal

³⁸ Cf. *Seagle*: op. cit. pp 310–311.

³⁹ *Rode, C. C., Anderson, T. J., and Christol, C. Q.*, Introduction to Political Science. New York–Toronto–London, 1957, pp 189–190.

deeds that the inhabitants of these colonies in utilizing their lands and in their disputes relating to property were entitled to the same rights and were bound by the same obligations in the litigious process as the other subjects of the United Kingdom.⁴⁰

It is also discovered in the course of examining these charters that these cannot be regarded — despite certain similitudes in form — as the first solemn proclamations of the rights of citizens. These included, at most, the rights of settlers, repeatedly reaffirmed in the course of the English parliamentary struggles as “ancient rights and liberties” and certainly not a kind of “human rights” to be accorded to all individuals. Similarly, only very vague vestiges of subsequent declarations may be found in those documents in which the settlers tried to regulate their mutual relationships and in which several main principles of their political organization were laid down.

Nearly a century-long evolution and rallying of forces, the joint effect of domestic and international events was needed to enable the Puritans who had fled from absolutist oppression but who were at the same time no less intolerant and absolutist in building up their own political organization, to abolish the interwoven relations between church and state. Parallel with the loosening of ecclesiastical ties the political philosophy of democracy was also gaining ground in these colonies; natural-law concepts professed by the European bourgeoisie in its revolutionary movements were playing an outstanding role in this process.

It has already been touched upon that the privileges laid down for the settlers in the colonial charters were not rights of citizens as they are understood today — at first not even the usual natural-law arguments were adduced for their justification — but the settlers were notwithstanding clinging to the conviction, which was becoming increasingly fictitious owing to the loosening of the ties with Britain and later to the severance thereof, that the charters laid down the ancient rights and privileges due to born Englishmen, also for themselves and their progenies. As time was passing by — obviously due to French influences — references to the laws of nature were becoming increasingly frequent; the road leading to the solemn declaration of the rights of settlers was leading through coupling the ancient English Common Law with natural-law ideas.

The settlers had first adopted the view that under the charters all the rights and privileges enjoyed by born Englishmen are accorded likewise to them; later, disregarding the provisions contained in the charters, they began to demand the rights of British nationals for themselves, evoking their Anglo-Saxon origin. It took only one step from this stand to demand these rights as human rights utilizing natural-law philosophy by then dominant for the bourgeoisie of the European continental countries.⁴¹ It was mainly Locke whose teachings had a major impact on the American evolution of ideas. The “social contract” professed by Locke recalled even in its form the famous Mayflower pact, and its content, social

⁴⁰ *Scott, A., Political Thought in America.* New York, 1959, p. 4.

⁴¹ *Scott, A., op. cit.* pp 44–45.

effect was in keeping just with the settlers' demands: the philosophical vindication of the revolutionary actions directed against the government — the English mother-country — which was infringing natural rights. The famous lines of Locke proclaiming that the right of protecting individual liberty and private property must be reserved for the community against all attempts and efforts to the contrary⁴² meant an efficient intellectual weapon against the arbitrary actions of the mother country's Parliament which were running counter to the interests of the colonies. It was thus not surprising that these teachings came to be included — sometimes verbatim — within the American Declaration of Independence.

In establishing ties between the ancient English liberties as embodied in the Common Law and the philosophy of the ascending bourgeois class, as embodied in natural law, the well-known commentaries of Blackstone on the constitution were of an outstanding importance. These writings did not contain new, revolutionary ideas when compared with the classics of the bourgeois theory of natural law but they did mean the first illustration in England of the penetration of natural law ideas into positive law. Following the lead of the great old scholars of natural law, Blackstone concluded that the individual had enjoyed an absolute freedom prior to the emergence of the state and upon entering bourgeois society he had to surrender a part of his freedom. But he still retained the ancient or fundamental right of personal security, liberty and private property which had been instilled by the unchanging laws of nature; the primary objective of the society organized within the state was to protect the individual in the enjoyment of these absolute rights.⁴³

This train of thoughts, when conceived, had a revolutionary effect in the colonies, for the same English Parliament which was able, through constitutional struggles lasting for decades, to compel the King to accept the bourgeois democratic system of government, pursued in the colonies a ruthless policy of taxation, did not recognize the right of popular representation, deployed openly armed force against them, relentlessly barring the way for them to enjoy those rights which were — either as “ancient” or “natural” rights — the due of English citizens in England. When the American colonies resorted to arms in defending their interests, they could do this by evoking the “ancient” rights considered identical with the “natural” rights.

The impact of natural law philosophy is clearly discernible, particularly since the middle of the 18th century in American political writings published mainly in the form of pamphlets. In 1775 Alexander Hamilton branded the objectives of the British Parliament aimed at restricting the freedom of colonies as being “contrary to natural law, having a disruptive effect on the British constitution and shaking the faith in the most solemn agreements.”⁴⁴ Tom Paine's famous revolutionary pamphlet, the “Common Sense” (1776) advocating complete rupture

⁴² *Locke*: op. cit. II. p. 192.

⁴³ *Blackstone*, J., *Commentaries on the Laws of England*, I. 1.

⁴⁴ *Hamilton*, A., *The Farmer Refuted*. 1775. Quoted in *Scott*: op. cit. p. 52 et seq.

with Britain which played a major, perhaps decisive part in convincing the hesitating, demanded from the British Parliament not the rights of British citizens but the "natural" rights which were due to the whole of mankind. The famous sentence written by Paine, "it is our natural right to establish a government of our own"⁴⁵ amounted to the full unfolding of the intellectual process outlined in the foregoing, and to amalgamating, identifying self-government previously held to be an ancient right of the English, with natural law.

The same trend of the evolution of ideas is reflected in the other great documents of the American revolutionary movement. The First Continental Congress held in September, 1774 evoked, in equal measure, in a rather equivocal way, the charters granted for the settlers, the principles of the British constitution and the unchanging laws of nature and laid down in the "Declaration of Rights" the rights of the settlers to life, liberty and property.

A clear natural-law concept is found in those constitutions which were adopted by the colonies immediately before the outbreak of the American War of Independence, most of which contained the Declaration of Rights as a preamble (Bill of Rights). Such solemn declarations on the natural, inalienable rights of man were included in the constitutions of the states of North-Carolina, Delaware, Maryland, Massachusetts, New Hampshire, Pennsylvania, Vermont and Virginia, of which the Virginia Declaration of June 12, 1776 is the most famous. This declaration served namely as a model not only for the like documents of other American colonies but also for the Declaration of Independence and the famous Declaration adopted in revolutionary France.

The Declaration of Independence adopted on July 4, 1776 deduces, following Locke, the right of self-defense against tyranny from the original "natural" contract and thus places the war against the English mother-country under the shield of "natural justice". The Declaration of Independence proclaims as a matter of course that all individuals are entitled to the Right of Life, Liberty, and the Pursuit of Happiness, and that the peoples have the right to oust a government which denies the enjoyment of these rights.

The emphasis on these three undeniable and inalienable innate rights of the human personality as natural rights, and their inclusion as basic principles in the Declaration of Independence and colonial constitutions meant a decisive step not only on the historical road of citizens' rights but implied the solemn sanctioning of the change in the entire political thinking. Natural law became, in this way, a reality raised from the level of speculative tenets and made a great step forward to become positive law. While previously the state or the monarch representing it had been considered the source of all laws, this relationship was changed into its reverse through placing natural law above positive law. It is held in the American variety of natural law — embodied in a solemn form in the momentous declarations of the War of Independence — that the state does not create, but only recognizes and protects individuals' natural rights; even more, the state is created for the

⁴⁵ Paine, Th., *Common Sense*. 1776. Cited by *Scott*: op. cit. p. 88.

purpose of protecting these rights with the utmost efficiency. In the slave-holding and feudal societies the individual was absorbed in the community, his rights were asserted against the state by the community; the revolutionary movement of the bourgeois class evolved under the slogan of innate, natural rights due to single individuals. And after the victorious conclusion of the revolutionary struggles natural rights were transformed into positive law, rendering these legal norms into subjective rights, enjoyed by the citizens in their relationships with the totality, the state.⁴⁶

This process, the historical path of the transformation of the basic principles laid down in the Declarations can be easily followed to its conclusion by examining the example set by the newly-independent American colonies. The constitution drafted by the Constitutional Convention opened on May 25, 1781 laid down the structure of the new state, defined the principles of government activity. It is very remarkable that after independence and sovereignty had been achieved, those who drafted the constitution were concerned not so much with laying down "natural" and inalienable rights in positive law, but rather with the determination of the institutional safeguards of these rights. This may be explained chiefly by the prevailing situation: the American War of Independence was waged not for extorting new liberties but to defend those freedoms which had been previously accorded to the colonies. Natural-law philosophy served in America primarily the philosophical justification of the national liberation war, but the fight was waged, in the main, to restore those rights and liberties which had been attained by the citizens of England a century before, the enjoyment of which was claimed by the population of the American colonies — if only on the ground of their descent. After the successful conclusion of the war the revolutionary principles of natural law which had served so aptly the vindication of shaking off tyranny, were necessarily fading away before the requirement of establishing a firm, centralized system of government.⁴⁷

That natural-law ideas and the proclamation of "natural" rights were included in the American constitution is partly accounted for by the fact that it was a condition laid down by the states which had taken part in the War of Independence (induced to do so by their distrust in federal organs) that the constitution be supplemented with an appropriate declaration, or the Bill of Rights be adopted. On the other hand it may be assumed that the settlers establishing the new states were prompted by their adverse experiences with the British parliamentary system to restrict, through the inclusion of the Bill of Rights in the Constitution, the powers of their own legislative body and to place its operation under the control of an organ which was independent of the Congress. The Declaration of Rights thus became an organic part of the American Constitution and as such was raised to the level of the supreme law of the land. With this, the first, natural-law stage

⁴⁶ Jellinek, G., *Die Erklärung der Menschen- und Bürgerrechte*. Leipzig, 1895, p. 3.

⁴⁷ A most revealing instance is the upholding of slavery after the victory of the War of Independence.

of the American history of human rights came to an end, serving as a model, an example to be followed in the process of evolution in Europe.

The most lasting achievement of the 17th and 18th century natural-law concept, the instrument of the widest impact on the evolution of positive law was the Declaration drafted, at the upsurge of the French constitutional movement, upon the initiative of the French "Third Estate", the bourgeois class. Both as regards its objectives and its actual effect this Declaration went far beyond national boundaries. The Constituent Assembly of the French Estates voted, on August 27, 1789, for the "Déclaration des droits de l'homme et du citoyen" dealing not only a mortal blow to feudal rule in France but showing the path to be trodden in the fights of the ascending bourgeois class the world over.

The French "ancien régime" against which the attack was launched by the "Third Estate" has lived as a typical pattern of feudal absolute monarchies in the public mind. Indeed, even if there had been some freedoms in that system these were merely privileges characteristic of feudalism, or other personal privileges and were accorded only to the nobles and the clergy, i.e. a very limited circle of the privileged. Censorship, unlawful arrests, the ill-famed institution of the "*lettre de cachet*", the restrictions imposed by the medieval system of guilds, religious intolerance and other phenomena inherent in the feudal system clearly show that the "ancien régime" was almost a perfect embodiment of everything against which the attack was launched by the young bourgeois class. No wonder that under the circumstances Montesquieu and other thinkers of enlightenment in France, when scourging domestic conditions looked at Britain as their model; Britain was the country where the power of the feudal nobility had already been broken by the bourgeois class and where effective safeguards had been introduced for the protection of the "ancient rights and liberties". The achievements attained in the course of the English constitutional evolution were of course well known in France but owing to the slower pace of the evolution of social conditions the political force which could have been capable of accomplishing what had been already accomplished in Britain was lacking for a long time. In keeping with the growth of the economic power of the bourgeois class the political objectives and the supporting armoury of the new, ascending class began slowly to take shape. In this specific, legally coloured philosophy, the revolutionary natural law of the bourgeois class, were formulated the ideals of the new social system which meant a powerful motive force for the overthrowing of the obsolete system of society.

The natural law of the 17th and 18th centuries showed substantially identical contents in the most advanced European countries. The fact that the ideas of the French adherents of natural law were in the foreground logically followed from the position of France as a great power. This impact was enhanced by the ripeness of conditions in France for the growth of the revolutionary seeds inherent in natural-law theory. The French theory of natural law became something of a model for other countries on the European continent and had — as has been

seen — a considerable effect upon the course of the American fight for independence. This impact, parallel with the victories achieved in the War of Independence, was being reversed: it was then the American Declaration of Independence and the constitution-making of the American colonies which became the inspiring model which, not without the contribution of French officers (like Lafayette) fighting in the American army, was adopted by the philosophy of the European, in the first place by French, freedom movements and became a major intellectual motive force in the revolutionary struggles.

It was only obvious that when in 1789 the triumphant advance of the bourgeois revolution shifted the balance of forces in favour of the bourgeois class in France, this class summed up the leading principles of the society led by itself in natural-law formulas. The bourgeois class firmly believed that the form chosen by it, the solemn declaration of the comprehensive, perennial nature of bourgeois demands would contribute to the wide-spreading of these demands and it would show the way of reaching a faultless, just social system, i.e. the bourgeois system not only for the French "Third Estate" but for the whole of mankind, in all countries and for all ages to come.

It goes without saying that the ideas of the French "Third Estate" and the solemn declarations reflecting these were nothing but the products of the age displaying the concomitant limitations in time and space. Still, among contemporary documents laying down the interests and objectives of the bourgeois class a special place should be allotted to the Declaration. The French Declaration of the rights of man and citizen went namely beyond the positive law limitations of the Constituent Assembly's activity and gave expression, with its simple but still majestic wording, to an entire world outlook, not only to the enlightened philosophy of the 18th century French bourgeois class but also to the ideas of the liberal bourgeois class of all capitalist countries, to the bourgeois views on world and society.⁴⁸

In the revolutionary philosophy of the French bourgeois class it was particularly the teachings of Montesquieu and Rousseau which enriched political theory and subsequently, after the start of the great bourgeois revolution, political practice as well. Montesquieu had an almost unique effect in the first place as regards the relentless criticism of feudal tyranny, later in consolidating of the power positions of the ruling bourgeois class after the victory of the revolution in "mitigating" revolutionary ideas in a positivist-liberal direction. On the other hand Rousseau, owing to the directly revolutionary nature of his doctrine, had an impact on the trend of events and ideas when the actual revolutionary fighting was the order of the day.

It is not very difficult to discover the reasons lying behind this difference. Montesquieu was never able to dispel the duality, represented by him personally, of the rationalist thinker and nobleman sticking to feudal privileges; although he turned sharply against all manifestations of absolutist oppression but conceived

⁴⁸ Colliard, *op. cit.* pp 48 — 49.

of the enlightened society based on reason's commands, without encroaching on feudal privileges. It logically follows from this that just as the impact of the bourgeois natural law philosophy is encountered in Montesquieu's work in superficial references going to the formal recognition of natural laws at most, his clinging to feudal privileges prevented him from recognizing the human rights due to all individuals, in the most significant field of the revolutionary effect of natural law theory. Rousseau, one of the most radical exponents of the revolutionary substance implied by natural law theory, coupled this revolutionary idea, which was to tear to pieces feudal limitations, with the sacred and inviolable human rights. It is understandable that his name — not always with good reason — became for a long time inseparable from the protection of and respect for citizens' or human rights. It has become clear by now that it would not be justified to attribute the formulation of problems in the Declaration of human rights to Rousseau and to discover the systematic expounding of the natural rights of man in his *Contrat social*. However great was the effect of Rousseau's teachings on the course taken by the bourgeois revolutionary transformation of society, the ideas of the "*Contrat social*" could not serve as inspiration for makers of the Declaration—owing to their basically anti-individualistic approach. The thoughts of Rousseau are not easy to follow in his work on account of his not always clear and even self-contradictory arguments, but it may be unhesitatingly stated that he rejected the existence of an individual sphere of liberty which was presumed to be perennial and to be respected by the state.⁴⁹ Although pursuant to the social contract, as interpreted by Rousseau, the individual renounces only a part of his freedom for the benefit of the state but the extent of this part shall be determined by the holder of state power. The contradiction is only an apparent one at this juncture for the fullness of sovereignty is the people's due in Rousseau's system; Rousseau, the representative of the democratic-minded bourgeoisie, sought to extend the sphere of liberty and to safeguard the constitutional rights of wide strata of the population. But the strong emphasis laid by him on the role of the community led to the impairing of individual rights and to transforming these, to some extent, into community rights which provided a ground for attacks — particularly in respect of citizens' rights — for all kinds and types of individualistic concepts.

The individualistic, natural-law outlook inspired the entire Declaration on the rights of man and citizen.⁵⁰ The bourgeois class, after having obtained political power proclaimed its own demands in the form of natural and inalienable rights, as sacred and inviolable, to which man is unconditionally entitled and which cover, without limitation, all individuals. Consequential upon this concept the purpose to be pursued by the state and all political communities or associations should be the protection of the natural and inalienable rights of man;⁵¹ such a social system in which these rights were not guaranteed and the separation of

⁴⁹ *Jellinek*: op. cit. p. 5.

⁵⁰ *D'Entrèves*: op. cit. p. 49.

⁵¹ "Déclaration des droits de l'homme et du citoyen". Art. 2.

powers is not effected, which would be a safeguard of implementing these rights, could not be considered as constitutional.⁵²

The Declaration, sanctioning the objectives of the triumphant bourgeois class, proclaimed bourgeois demands to be natural, inalienable rights which are due to man, and which shall apply to everyone without any restriction. These "natural and inalienable" rights embody the most important, basic interests of the bourgeois class, these rights necessarily reflect the principal features of the individualistic economic and social system. The demand of personal freedom — the more and less pronounced appearances and evolution of which have been traced in the foregoing — was changed into the rights of man and citizen in the philosophy of the bourgeois class, and was singled out as the most important of these rights. It was also significant that in Article 2 of the French Declaration where the rights of the individual are listed: freedom, as the most important demand, is immediately followed by the right to private ownership. The concept, originating in physiocratic sources and appearing also in the Declaration in which the right to ownership is conceived, in addition to the freedom of work, employment and contracting, as the aggregate of the right to the unhindered acquisition of movable property, the free disposal thereof, the buying and possessing landed property,⁵³ facilitates an insight into the substance of citizens' rights and reveals its real intricacies. It is a characteristic feature of the physiocratic theory that human rights are presented as the freedom of private ownership, the right to human liberty as the freedom of private property. The appearance of this idea in the Declaration — though in a less marked wording — provides a proof, more than anything else, of the role of capitalist economy in the formulation of citizens' or human rights.

The demands of the capitalist bourgeois class are also reflected in the Third Estate's Declaration laying emphasis on the demand of equality only against the former privileged classes. It is laid down in Article 1 of the Declaration that "men are born and shall live free, with equal rights. Social differences can be based only on the common weal", and under Article 6 all public offices are made accessible for the bourgeois class.⁵⁴ These provisions leave no doubt that the bourgeois class — aware of the dangers implied in the economic aspect of equality in respect of the destitute — had no intention — just like its predecessors in America — to fully materialize the ideas professed by itself. For this reason the catalogue of the rights of man and citizen in the Declaration is restricted to the right of freedom, ownership, personal security and of the resistance to oppression.⁵⁵

Similar to its outstanding antecedent, the American Declaration of Independence, the French bourgeoisie's Declaration is not a document of direct legal

⁵² Ibid.: Art. 16.

⁵³ On the relations between the physiocratic theory and citizens' rights see: Szabó, I., *Az emberi jogok mai értelme* (Modern concept of human rights). Budapest, 1948, pp 32—37.

⁵⁴ See: Declaration des droits de l'homme et du citoyen. Art. 1. and Art. 16.

⁵⁵ Ibid. Art. 2.

nature⁵⁶ even if this fact was at variance with the initial intentions of those who had framed it. It may appear from what has been said that the Declaration contains not so much positive legal rules but outlines a specific world outlook characteristic of the young bourgeois class, it gives expression to and sums up the natural law concept. Thus the lofty principles contained in the Declaration do not directly imply legal requirements but lay down in a general form the principal bourgeois demands to be applicable in all countries and to the individuals of all ages. The term Declaration itself does not convey more, in its original meaning, than a solemn pronouncement, proclamation. The "rights" contained in it were not rendered into veritable law i.e. into a set of rules of conduct enforced by the coercive power of the state, until included, as organic parts, in the new bourgeois constitution.⁵⁷ In the first part of the French Constitution adopted on September 3, 1791 reference is made, under the title "Fundamental provisions guaranteed by the Constitution" (*Dispositions fondamentales garanties par la Constitution*) to the basic rights listed in the Declaration. In the first place there are laid down the right to equal access to public offices, the freedom of trade, the freedom of expression, the press, the written word, of the free publication of ideas, and the freedom of religion. There are provisions in the Constitution which supplement, almost extend the Declaration. It is not the Declaration but the first part of the Constitution in which are laid down the right of citizens to peaceful, unarmed assembly, in compliance with police regulations; several social measures and the ideas on the organization of public education.

Even if the practical implementation of the citizens' rights and liberties laid down in the first French bourgeois constitution could not be put on the agenda, in consequence of the subsequent revolutionary upheavals, the 1781 Constitution had an immeasurable effect on the recognition of citizens' and human rights. For the first time, natural law ideas became in Europe through their enactment in the constitution parts of positive, statutory law. Those generally formulated freedom demands which had appeared in preceding centuries as moral requirements or privileges accorded to few, were changed through the first constitution of the French bourgeois revolution into legal provisions binding for all. With this was started the history of citizens' rights in Europe in the real, legal meaning of the term.

5. THE IMPACT OF IMPERIALISM UPON THE NATURAL LAW CONCEPT OF CITIZENS' RIGHTS

The long-lasting political and intellectual process in the course of which the idea of human rights were transformed from a demand of the ascending bourgeois class into positive law adopted by the bourgeois state, came to a close with the

⁵⁶ *Colliard*: op. cit. p. 49.

⁵⁷ The view which became dominant in the legal positivism makes a sharp distinction between the declaration of rights and the guarantees thereof, and only the latter are considered to be of legal nature.

American and French Declarations, then with the subsequent adoption of the constitutions. This meant also the end of the first stage in the historical evolution of citizens' or human rights. Natural law theory which had played the role of a midwife in connection with the emergence and recognition of these rights, was slowly relegated into the background, parallel with the consolidation of the bourgeois class. The positivist theory concomitant with the consolidation of bourgeois political power placed into the foreground, also in respect of human rights, the legislative enactments, the statutes by which these rights were sanctioned. Rejecting all "superior", natural-law justification, positivism saw the safeguards of human rights in their statutory nature, in their having been recognized and sanctioned by the state. The problem of citizens' or human rights became instead of a problem of philosophy and ethics, one of statutory, more precisely of constitutional law. As, starting with the 19th century almost all of the written constitutions have included the declaration on the fundamental rights of citizens, the analysis of statutory law, firstly of the constitutions, in investigating into the issue of human rights offered itself as an obvious opportunity for the adherents of legal positivism.

This process was leading, and it was only natural, to a gradual transformation of the purport of the rights of citizens. The natural-law concept (in which the state had been considered as an instrument serving the protection of individual rights and in which these rights were pointed out as special, superior institutions even after these rights had been laid down in constitutions or in Bill of Rights) was gradually fading away to be replaced by the positivist theory advocating the primacy of the state and legislation. The logical conclusion following from this concept was that the "natural" rights of man and the declarations including these were gradually losing their distinct character in bourgeois statutory law, mainly in the constitutions. Also such views were relegated into the background, according to which the great declarations on citizens' or human rights had been assessed as documents having direct legal validity, or such views (professed e.g. by Duguit) that these were *sui generis* sources of law — placed on a level higher than all other statutes.⁵⁸

"Natural and inalienable rights" thus became fundamental rights granted by the bourgeois state, and their universal character was reduced to the level of rights accorded to citizens in bourgeois states. The crux of the matter was shifted to the problem of the special safeguards, laid down in statutes, of the so-called fundamental rights, while the great Declarations have been doomed to obscurity as respectable but for the "sober and realistic" thinking useless relics of the past.⁵⁹

Attention focussed again on the relation between citizens' or human rights when the transition to the imperialist age and its decisive consequences upon the implementation of citizens' rights came to shake the very foundations of

⁵⁸ Duguit, L., *Les transformations générales du droit privé depuis le Code Napoleon*. Paris, 1920, pp 559—561.

⁵⁹ Giese, F., *Die Grundrechte*. Tübingen, 1905, pp 21—24.

the liberal capitalist society and its positivist philosophy. The major change in the economic life of capitalist societies concomitant with the transition to the imperialist epoch could not fail to leave their marks on the problem of citizens' rights.

Intervention by the state was carried out, in the main, along two lines which were running, to a certain extent, in opposite directions. One was the increased participation by the state in economic activity and in its control principally through the growth of state-owned property, the increasing share of government agencies in economic activities, the taking over by the government of certain economic functions. The other was the introduction of several reforms affecting labour and accomplishing some objectives of social policy.⁶⁰ Both forms of activity cut across the traditional interpretation of citizens' rights, with the emergence of new rights and duties of citizens and with — this is important for the problem under discussion — the revival of certain natural-law concepts.

The setting aside of phenomena inseparable from monopoly capitalism such as the principle of free competition, growing government interference with spheres of private activity previously regarded as sacred and inviolable — all this could be carried out only by breaking through the liberties which had protected the "private" sphere against all kinds of interference. These rights which contained the formulation of the major objectives of the ascending bourgeois class in the revolutionary struggle of the 17th and 18th centuries against feudal society and state became, under changed social conditions, dangerous for the vital interests of the bourgeois class.

The attacks launched against the rights of citizens under various guises constitute an organic part of the over-all social process the legal repercussions whereof are assessed in socialist jurisprudence as the disintegration of the bourgeois rule of law.⁶¹ It is not a rare occurrence that in times of emergency, under exceptional conditions citizens' rights are, to some extent, restricted. At times when the whole existing order of society is threatened with dangers which cannot be averted by the usual means it has always been the practice of governments to eliminate the menace, save the state and society through concentrating exceptional powers in their hands, through introducing institutions and procedures susceptible of providing opportunities for quick decisions, and the execution thereof.

It is attempted by some bourgeois scholars to present the large-scale and lasting restrictions of the rights of citizens which have become a permanent feature in practically all walks of life in modern capitalist states by alleging the existence of exceptional circumstances. They refer to the emergency-born restrictions of political liberties; well known already prior to the epoch of imperialism. The quick pace of economic development, parallel with the necessity of growing government control, the spreading of social care, the decades-long international

⁶⁰ See: *Tumanov, V. A.*, *Burzhuazno-reformistskaya teoriya "gosudarstva vscobshchego blagodenstviya"*. *Sovietskoye Gosudarstvo i Pravo*, 1959, No. 11. pp 81 — 83.

⁶¹ For the constitutional law effects of the issue see: *Kovács, I.*: *A burzsoa alkotmányosság válsága* (The crisis of bourgeois constitutionalism). Budapest, 1953.

tension and the state of mobilization (intended at the outset as temporary but regrettably permanent) are the factors which are usually described as lying behind the so-called crisis of citizens' rights.⁶² This explanation does not — in my view — exactly square with the facts. Even if the deep-lying reasons behind these factors are dug out, i.e. the efforts directed at solving the inherent basic contradictions of the capitalist society, the overcoming of slumps, the doing away with unemployment, and parallel with that the attainment of the so-called full employment which constitute the fundamental objectives of society⁶³ we will find at most an explanation for the emergency measures. To attempt to justify a decades-long process through resorting to the pattern of a state of emergency does not promise much success; such a long duration of a situation claimed to be exceptional can hardly be reconciled with statements on the healthy development of capitalist society. The restriction of the traditional rights of citizens effected under the pretext of an emergency situation must be considered — at least in principle — as an exceptional phenomenon which can on no account constitute an admitted trend of policy of the monopoly capitalist state. In our opinion the theories vindicating the activity of modern capitalist states should rather try to prove the uninterrupted continuity of the line of development, namely that the change in the state's functions and that the concomitant modification in the traditional interpretation of citizens' rights has been brought about by an organic development process. As it is, the policy of the monopoly-capitalist state is not directed in the first place at openly and directly wiping out the rights of citizens, but rather at circumventing these rights in a way that while upholding the traditional bourgeois system of values, effective opportunities are furnished for discarding interests provided and protected by citizens' rights.⁶⁴ It is thus easy to understand that the principal problem of contemporary bourgeois society is formulated in this way: how to bring the activities of the modern "Planned State" into harmony with the idea of the Rule of Law which reflects the traditional concepts of liberal capitalism and with the "classical" rights of citizens expressed therein.⁶⁵

References have already been made in the foregoing to the special part played, in this intricate trend of evolution, by *natural law concepts* which were thought, after the ascendancy and triumph of legal positivism, to have vanished for

⁶² See: Friedmann, W., *Law and Social Change in Contemporary Britain*. London, 1957 p. 279.

⁶³ See in this context the activity of the British commission on full employment formed during the Second World War and its findings in the Beveridge Report (Report on Social Insurance and Allied Services).

⁶⁴ This statement does not, of course, apply to the practice pursued by Fascist states where citizens' rights were openly and cynically wiped out. Fascism is, however, a stage in the development of the imperialist state which is not unavoidable. Therefore the problems connected with the crisis of citizens' rights in the age of imperialism may be more conductively analysed through examining the practices of states which are in the more common line of imperialist development.

⁶⁵ Friedmann: *op. cit.* p. 277.

good. In the epoch of imperialism the widely expanding revival of the natural-law trend leaves its mark upon the entire evolution of the ideological class struggle.

That natural law can be made use of for the purposes of the modern imperialist state is basically due to the peculiarity of this law, viz. that the specific system of values covering the substance of natural law has, in the course of history, always furnished the frames for the reception of a *variety of contents*. The meaning of the requirements conforming with the "nature" of things and phenomena, and thus harmonizing with the "basic laws of world order" cannot be ascertained unless first revealing the ultimate, supreme value which determines these laws. What substance will be lent to this system of values, how to determine the concrete rights and duties, will always depend on the concept formed about the essence of this ultimate value. The other values found at the lower echelons of this system of values will be given entirely different meanings in the function of the former and completely different practical consequences may be encountered by formally identical or at least basically similar natural-law systems. Natural law has come to be used by now not only to camouflage and justify the most differing objectives, but resolute efforts are discernible which, making capital out of the relatively recent concept of the "changing content of natural law", attempt to adduce a scientific justification for the possibility of different interpretations. In the course of the process we are witnessing in our days which may be called *the relativization of natural law*, the fictitious concept of an unchangeable and eternally effective natural law has been, in the main, given up. This provides a variety of possibilities for admitting of widely different theoretical views and practical actions, ultimately affording a most flexible adaptation to practical requirements.⁶⁶ History has shown that the natural law concept was equally suitable for serving conservative and revolutionary demands, for justifying the existence of given institutions and also their replacing with other ones. In our age, by making use of the "natural law with a changing content" the last theoretical obstacle was pulled down which, in the shape of a fictitious eternal and unchangeable validity, barred the way for the theory to fully discharge its role in serving the economic and social foundations. It is not difficult to understand that at the moment when the interests of monopoly capital required in the field of law — while retaining the greater part of the capitalist government and legal institutions — a break with several traditional values appraised as outworn through the evolutionary process, natural law was found to be an almost indispensable means in building up a new system of values.

Nowadays it is the conservative role of the "revived" natural law attempting to justify the existing institutions which is in the foreground. The bourgeois class of the monopoly capital attempts, by resorting to all available means, to mask its desertion of traditional ideas and institutions. They attempt to attain their altered objectives and to lend new content to old forms not through an

⁶⁶ On the relativist concept of natural law see: Kunz, J., *Pluralismus der Naturrechte und das Völkerrecht*. Österreichische Zeitschrift für öffentliches Recht. V. 1953, pp 257–311.

open rejection of values branded as obsolete but through retaining the old patterns. This process is perhaps most clearly discernible in the sphere of citizens' rights.

The attack against the traditional, i.e. liberal construction of citizens' rights in the theories and practice of modern capitalist states is directed not at discrediting the idea of citizens' rights. On the contrary, it is attempted to sanction the new purposes, the new assessment of values through relying on the undamaged respect for citizens' or human rights, a respect which has been even enhanced in consequence of the tragic experiences gained during the Fascist tyranny. The philosophy of the "revived natural law" — while following, on the surface, its great revolutionary antecedents, the natural-law trends of the 17th and 18th centuries, the conception of inviolable and inalienable human rights — does, in fact, defend not the original purport of these rights, but conceals, behind the façade of "classical" rights the demands formed as a result of the monopoly-capitalist trend of evolution. Owing to the necessarily vague and obscure character of the original natural law, in the course of this "re-appraisal", the theoreticians reach back readily to the beginnings of this legal institution which had had a unique effect and had commanded full respect in its own time. Considering the constant changes in the content of natural law this device provides a most favourable ground for professing the new concept of citizens' or human rights as conceived in monopoly-capitalistic and imperialist states. Nowadays, due to the tragic experiences of the recent past, to the complete rejection of citizens' or human rights by Fascist governments, and to the ineptitude of all varieties of positivist theory to condemn Fascist oppression, has induced even a part of positivist theoreticians to give preference to the original natural law construction of citizens' rights against the positivist interpretation, and to attempt by this means to bring about a harmony between the concept of these rights and the objectives of monopoly capital.⁶⁷

"All great documents, the Declaration of Independence, the Virginia Bill of Rights and the French Declaration on the rights of man and citizen included, have the common feature that they contain many intuitive truths which can be understood and interpreted in the light of changing circumstances. Were this not so, these could have hardly been effective for more than a century and a half" — concludes one of the best-known experts on "welfare capitalism".⁶⁸ Indeed, the first natural law declarations of citizens' or human rights — due just to the changes of values constituting the content of natural law showed and still show green light for vindicating very differing objectives.

This state of things has been utilized by the theoreticians of the modern capitalist "welfare state" when the government's activity limiting the scope of free competition is made to appear as a process fully conforming to the requirements of citizens' rights. The trend of evolution is best discernible in the U.S. legal devel-

⁶⁷ Cf. *Scott*: op. cit. p. 420 et seq.

⁶⁸ *Davenport*, R.: *Welfare Capitalism, Not Welfare State*. Quoted in: *Ebenstein*, W., *Modern Political Thought. The Great Issues*. New York, 1955, p. 602.

opment. Resulting from the decisions of the U.S. Supreme Court the traditional rights, among these the fundamental rights of citizens, cover such new requirements which are the expressions not so much of the liberal-individualist outlook characteristic of the 19th century, but much more of monopolistic-collectivist aspirations. The driving back of free contracting and the right to the unlimited disposal with private property which is a characteristic feature of the imperialist stage of bourgeois legal development was effected, of course, by no means by a smooth process. For a long time it was just the judicature of the U.S. Supreme Court which stood in the way of practically implementing "welfare" legislation so much that this practice of the Supreme Court even threatened for a while, during Roosevelt's term of Presidency, with constitutional crisis in connection with the New Deal policy, and was the main obstacle in abandoning the traditional interpretation of citizens' rights.⁶⁹ The fight has been decided by now, and even if there is still opposition against the constantly expanding activity of the "welfare state" such opposition is voiced mainly in legal writings and affects judicial practice to a relatively small degree only.⁷⁰

Basically the same process went on in the first decades of the 20th century in the leading capitalist states of the European continent; the sharpness of conflicts connected with the differing construction of citizens' rights was much blunted by the fact that neither the British nor the French courts had had as extensive powers of interpreting statutory law as had been conferred upon American courts under the due process-clause. The issues relating to the growth of government interference were placed in the centre of attention to an increasing extent by the evolution of monopoly capitalism and due to the two world wars. In Britain e.g. the Beveridge Report in which the problem of full employment was examined with a thoroughness unknown up to that time, can boast of a scientific justification of the necessity to restrict the rights of citizens.

In the trend of evolution of the relations between citizens' rights and natural law theory — developing during many decades within the frames determined by "welfare capitalism" an odd deviation ensued as a result of the rising of Fascism and its destruction in the Second World War. In this period the justification of citizens' rights assumed special forms.

A great impetus was lent to the revival of natural law after the Second World War when also the theoreticians of the positivist theory were faced with the require-

⁶⁹ The U.S. Supreme Court had, since 1905 *Lockner v. New York* case adopted a firm stand against the so-called "welfare" legislation; by resorting to the due process-clause it rejected consistently the practical implementation of new statutes implying the setting aside of the traditional liberalistic construction of citizens' rights. The situation became so aggravated that President Roosevelt in order to have the New Deal carried out, intended to reorganize the Supreme Court through appointing new members. After 1937, the Supreme Court, applying the so-called self-limitation of judicial powers has, in the main, allowed a free passage for "welfare" legislation.

⁷⁰ See in particular: *Hayek, F. S., The Road to Serfdom*. London, 1944. *Hacker, L., The Welfare State: A Negative View*. *The American Scholar* XIX. Autumn. 1950. Quoted by *Ebenstein*: op. cit. p. 614 et seq. *Davenport*: op. cit.

ment to find a new foundation for positive law which would provide more effective self-defence against fascism. Having in mind the fascist states which were not reluctant to cynically exploit statutory law for their own ends, many people professed that the validity of law should be placed on a footing of a "superior order" than mere legislative enactment. It was thus logical that the general foundations of positivism were shaken and numerous distinguished scholars and practising lawyers turned towards natural law, just in defending citizens' or human rights threatened in its very foundations under Fascist attack.

This line of development — nor is this an incidental phenomenon — is most clearly discernible in the German Federal Republic, where natural law principles have come to constitute an organic part of judicial practice. The activity of West German courts was characterized in the years after the Second World War, in addition to principles binding the judge (as the representative of state power) for the observance of the law, also by another guiding principle, declared to be of equal importance and officially recognized: namely the necessity of redressing the evils committed by the Fascist government in the guise of law, the enforcement of just treatment.⁷¹ This dual commitment induced legal scholars and the men of practice to draw the ultimate conclusion that although the judge, in exercising jurisdiction is bound in the first place by statutory law, his obligation to enforce justice may require him to apply such legal principles which are placed above (*übergesetzlich*) the statutes.⁷² These natural-law, superior principles were appreciable in the years following immediately after the war. When the German Federal Republic was formed and its government institutions evolved, these principles became almost the leading motives of the judicial activity of the Constitutional Court, the Federal Court and the courts of the *Länder*. As the unlawful practices of the Nazi government were pursued mainly in the sphere of citizens' rights, i.e. in the complete denial thereof, the justice enforcing activity of the higher West German courts and the direct application of natural-law principles were aimed at restoring the rights of citizens.⁷³ A special interest is lent to this process by the fact that although the classical idea of the *Rechtsstaat* and together with it the traditional, liberalistic construction of citizens' rights had been long considered as a thing of the past in the leading capitalist countries, as required by the trends of monopoly capitalism, the West German legal development has adopted a stand against Fascist practices which had wiped out the traditional construction of citizens' rights — still aimed to restore citizens' rights in the traditional meaning of the term. Thus the concept of the "*sozialer Rechtsstaat*" appearing in the Bonn Basic Law, covers the characteristic features not so much of a social law-state but

⁷¹ See: *Messner, J.*, *Naturrecht*. Innsbruck — Wien, 1950, pp 138 — 139.

⁷² See: *Friedmann, W.*, *Übergesetzliche Rechtsgrundsätze und die Lösung von Rechtsproblemen*. *Archiv für Rechts- und Sozialphilosophie*. XLI — 1955, pp 348 — 371.

⁷³ See e.g. *Schneider, P.*, *Naturrechtliche Strömungen in deutscher Rechtssprechung*. *Archiv für Rechts- und Sozialphilosophie*, XLII. — 1956, pp 98 — 109. *Rommen, P.*, *Natural Law in the Decisions of the Federal Supreme Court and of the Constitutional Courts in Germany*. *Natural Law Forum*. Vol. 4. No. 1. 1959, pp 1 — 25.

much more of a typically bourgeois-liberal state.⁷⁴ The Bonn Basic Law contains only the so-called classical liberties which — in keeping with their original interpretation — serve to protect the individual against the abuses of government.⁷⁵ Law-making and law application in West Germany has only recently begun to tread on the road of monopoly-capitalistic trend, although no insignificant difficulties are raised to the advance of this process by the prohibitive provisions of the Bonn Basic Law in respect of changing the so-called fundamental rights.

6. SUMMARIZATION

If a summing up of the process now outlined is attempted as to the changes in the meaning of citizens' rights we are witnessing nowadays, and certain general conclusions are drawn in this course, it will be clear that the trends of evolution may be grouped in two, closely interdependent categories of phenomena. One of these consists in a considerable extension of the traditional scope of citizens' rights, the penetration of rights which used to denote, in their classical sense, mainly political demands, into economic and social spheres. The right to subsistence wages has been recognized, the obligations incumbent upon governments to secure full employment, to support the aged, invalid members of society have been spreading within a widening sphere; to extend and provide educational facilities for all has also become a duty of governments. All these phenomena have, of course, amounted to a break-through of the traditional, liberalistic construction of citizens' rights which reveals the other characteristic feature of modern development; in the capitalist state of today the simultaneous enforcement of personal liberty and government control is inconceivable without the surrendering or at least reappraising of traditional bourgeois values.⁷⁶ It has been recognized that in addition to the *negative aspect* of liberty — i.e. the freedom of citizens vis-à-vis the state, the safeguarding of the liberty sphere, inaccessible for the state and enjoying increased protection with unsurmountable limitations imposed on the state — there exists a *positive aspect* as well: namely the obligation of the state to take action as determined in the first place by the social and cultural requirements of citizens. This recognition has brought about the shrinking of the extent of some rights of citizens, i.e. the restricting of the sphere of such rights. This double process which is advancing with the effective participation of the modern capitalist state is invariably accompanied by the disintegration of the traditional bourgeois system of values; therefore it is completely justified to speak of a crisis of citizens' rights in modern bourgeois societies. Even if as a result of this process of decay such a new interpretation of citizens' rights is emerging through which the individual will be protected in addi-

⁷⁴ See: *Menger*, F., *Der Begriff des sozialen Rechtsstaates im Bonner Grundgesetz*. Tübingen, 1953, p. 20.

⁷⁵ See: *Schneider*: op. cit. pp 100–103.

⁷⁶ See: *Ginsberg*, M., *The Growth of Social Responsibility. Law and Opinion in England in the Twentieth Century*. London, 1959, p. 7.

tional spheres against overwhelming state power, this can hardly counterbalance the many-sided restrictions imposed upon the rights of citizens in monopoly-capitalistic states. Natural-law trends both as phenomena giving birth to the concept of citizens' or human rights, and therefore destined for the "authentic" interpretation thereof, and as the depositaries of the human idea of justice placed under the protection of the concept of citizens' rights are playing a major and, in all probability, a decisive part.

SOCIAL FACTORS IN THE EVOLUTION OF CIVIC RIGHTS

1. CIVIC RIGHTS AND SOCIAL REALITY

The establishment of human and civic rights is an outstanding achievement in the social and historical growth of mankind. Apart from the societies of Antiquity and the Middle Ages, where the relationship of state and individual meant a specific problem, to enter into an analysis of which exceeds the scope of the present paper, bourgeois evolution, the birth of bourgeois society was the direct force which (although relying on certain ideas of the past) dealt with the conditions of its own existence on an ideological plane, and formulated them as the rights of man. The rights of man were, thus, necessarily in opposition to the state, as the most organized and most powerful form of the political community. However, it was not for the first time in history that the circumstances of the historical evolution of an idea or institution, and its original historical content also influenced later evolution, and that the original content, although historically conditioned, was accepted as a standard for the appraisal of the inevitable historical change. For example, the human and civic rights in their first manifestation (under social and economic conditions which insisted on the safeguard of free economic activities on the part of the state, i.e. on a certain negative attitude towards the individual), expressly set up barriers to state activity. However, by way of anticipation, the statement, unambiguously supported by the latest evolution of law, may be made that actually human and civic rights can no longer be considered as *mere* limitations of governmental activities. This of course implies that actually the theses reflecting the ideas of the first historic manifestation can no longer serve as standards. Human and civil liberties are more general concepts born under specific historical conditions yet lasting beyond the social relations of the time of their birth. Even in their recent evolution they incorporate the protection of personality, though in a variant conforming to actual social conditions. This may amount in a socialist society (where this conception has been translated into reality) to even more, i.e. to the unfolding of personality in a form corresponding to the conditions of society.

Marxist jurisprudence has already explored the main trends of the evolution of human and civic rights. The general course and outlook of this evolution in capitalist and socialist society are well known. However, a number of deviations from the universal and principal trend may be encountered as regards both argument and enforcement. Although these deviations are of a secondary importance and only affect the resultant curve of the laws of social evolution, nevertheless they are not negligible. And when in the following discussions of the course of evolution of human rights mostly these secondary phenomena will be dealt with,

and these in relation to capitalist society, this difference of levels will by no means be mistaken. This difference of levels will be present from the very outset, when e.g. besides the universal social and economic regularities, the functions of sociological factors limited in space and time, are studied, or attempts are made to find a response to the effects of political phenomena which express the political conditions of a definite society and period. However, exactly because the principal trend produces such secondary phenomena, and in many respects grows through them, and also because the general tendency becomes a "daily" routine through a multitude of secondary factors, a study of these effects and these phenomena in the sphere of human and civic rights will be instructive.

The effects of the factors referred to above and to be studied in the following discussion manifest themselves in many instances already in the mostly constitutional codification of human and civic rights.

However, the actual practice of civic rights is neither primordially nor exclusively defined by constitutional codification, but by the conditions of society, the actual sociological reality of society, which includes the political power relations defined by the fundamental social-economic and cultural conditions, the character of the governmental mechanism, its cultural level and traditions, and as a matter of course, constitutional codification itself and in this connexion also statutory regulation. It cannot be said that the elements enumerated by way of illustration carry equal weight. However, it may be taken for granted, and this is confirmed also by historical evolution, that all these elements, and many other, are instrumental in the actual practice of human and civic rights, so that this practice cannot be judged exclusively by standards of constitutional codification. Ferdinand Lassalle, in his famous speech on constitution, aptly valued the constitution partly as something more than a simple statute, partly perhaps, under limitations of the actual power relations of society, as something less. The actually effective power relations of society define the content of the constitution, as against which the written constitution remains but blank paper. Accordingly, Lassalle drew the conclusion that the problem of the constitution was a matter of power rather than of law.¹

Constitutional codification is, of course, extremely important, and may be particularly so in cases when it combines with regulations which have been introduced to safeguard the constitution and which enable the individual in the event of a violation of his civic rights to take direct recourse to the provisions of the constitution, or provide the means for judicial proceedings in such and similar cases. Still the fact remains that existence and extent of constitutional codification are by no means indifferent from the point of view of the practice of civic rights. The function of this codification is perhaps best expressed by the famous words pronounced by Montesquieu on the English Constitution: "It is not my concern to investigate whether the English today in fact enjoy free-

¹ *Lasalle, Ferdinand, Über Verfassungswesen. Rede im Fortschrittlich-Liberalen Verein zu Berlin—Friedrichsstadt, 1862. Reden, die die Welt bewegten. Stuttgart, 1959, p. 126.*

dom, or not. It suffices for me to say that according to their laws this freedom exists . . .”²

The constitutional codification of human and civic rights, beyond the conventional legal binding force of the constitution, expresses a certain restriction on the level of ideas, which in its original content was the expression of much too real social-economic relations and exigencies. However, in the course of evolution these relations and exigencies remained, in many respect with an altered content, the elements of bourgeois ideology. These elements which in bourgeois ideology, together with the watchwords equality and liberty, appeared as the inalienable, natural rights of man, at the time of the rise of bourgeois society in fact expressed a social-economic content on the ideological plane. This content which Engels had already analysed, meant the exigencies resulting from the economic growth of the bourgeoisie, such as property, free employment, legal security in economic life and commerce, etc. These real factors had already in the social system of feudalism shaped a legal regulation and practice which indicated the path of evolution of the human and civic rights. However, the original economic content, in its struggle with the forces of feudalism took on a political character, and manifested itself as a craving for liberation from a situation where one was at the mercy of a despotic absolute monarchy. In feudalism the social order was of a directly political character, i.e. elements of social life such as property, family, method of work, etc. “were raised to become elements of the life of the polity in the form of estates or corporations”. Economic power thus meant political power, simultaneously and directly, while economic dependence meant direct personal dependence, too. With the bourgeois revolution, together with the feudal social conditions, also the direct political character of the social and economic relations came to an end. At the same time this meant the disappearance of the fetters which owing to personal bondage restricted the segregated capitalist economic activity, relying on private initiative. However, the freedom of the man of the age of bourgeois transformation, in so far as this freedom meant a freedom from personal bondage, was accompanied by the exposure of man to the coercion of economic conditions, even when it was the question of the owner of a capitalist private enterprise. In point of fact when it came to reap the fruits of economic activities it was soon found that freedom of private enterprise was but an illusion. The social character of production — as it turned out — was not affected by private enterprise, it was merely made anarchical, the social division of labour being indirect. Consequently, the owner of a capitalist enterprise also loses his hold over the results of his own activities, since it will only turn out subsequently, in the market, whether his private activities were of any use for society, or were wanted at all. “That the modern state has recognized the human rights, amounts to about the same when Antiquity recognized slavery. In like way as slavery was the basis of the ancient world, so is bourgeois society that of the modern state, and so within bourgeois society man, i.e. the independent man associated with others

² *Montesquieu, L'Esprit des lois* (Hung. ed.), Vol. I, Budapest, 1962, p. 325.

by ties of private interest and of unconscious natural exigencies, who is a slave of organizational work and of the egotistic needs of his own and of others. The modern state recognized this natural basis in the universal human rights. Man did not create it (this basis) but with the proclamation of human rights for his part recognized it . . . as the place of his birth and as his basis.”³

In other words, the catalogue of human rights *is the legal reflection of relations already existing, and not the order of human relations created by law*. With the birth of the bourgeois state these social factors could freely act in the process of formation of human and civic rights. So the human rights were formulated in conformity with the ideological form created by the ideologists of the rising bourgeois class for this need, on a high level, in declarations or in constitutional rules embodying principles. The ideological appearance of actual economic needs on this plane (which, in a more profound sense proved an illusion as to real freedom), partly owing to the already consolidated economic-social relations, partly because of fundamental sociological limitations, resulted in these rights being formulated in a specific form even within the constitutional framework.

The manner in which the legal and social practice of civil liberties eventually evolved under this “conceptual heaven” of constitutions and declarations, depended on a number of factors. Between the ideological level and realistic practice there stands political practice, shaping statutory formulation, and even enforcement as determined by social relations. An element of this political practice results e.g. from practical enforcement of the historical accumulation of state-organizational and guiding experience. This element is not political in the sense that it would reflect, in its content and directly, the participation in the affairs of the state, or the phenomena resulting from the development of power relations associated with the management of state affairs, the form of the state, and with the definition of its functions and the content of its operation. In point of fact this element is exploited by the sovereign power almost as a technical means in a policy of such content.

It is a difficult task to determine the social limitations of state activities or their so-called moral barriers in an unambiguous form. In particular these barriers cannot be put up on abstract principles. The state is an actually operating power organism whose operation is conditioned by a number of effects or circumstances, in the last resort, by social-economic relations. That is, the limitations of state activities are social and at the same time historical also, the repercussions of social relations, and together with these, of human activities to state activities. The fact that state activities manifest themselves in a certain definite form, among others also in specified statutory forms (when state activities are considered in their totality, and not only from administrative aspects), is by itself the outcome of historically accumulated social experience, which is associated with the conditions

³ Karl Marx and Friedrich Engels, *The Holy Family or the Criticism of Critical Criticism*. Works of Marx and Engels, (Hung. ed.), Vol. 2, Budapest, 1958, p. 112.

of how the target of state activities can be achieved, or at least approached. In this connexion first of all the relation between state and individual will have to be analysed. In fact state activity — broken down to its foundations — is also human activity, and is in its last resort directed towards human conduct. It was not by mere chance therefore that this political-technical element, in which certain experiences in organization and statecraft manifested themselves in a summarized form, appeared ideologically at an early stage, and hand in hand with bourgeois evolution in a wholly clear-cut form as the problem of the *relations between State and individual*, and again with emphasis on the natural rights of the individual as the limitations of state activity. Just because in practice there is an immediate relationship between this element and the individual, its evolution is to a great extent influenced by the evolution that has taken place in the social position of the individual. It was not therefore by mere chance that the problem had acquired ideological significance just at a time when a certain personal freedom of the individual — fraught with political significance — was the condition of the continued evolution of economy. In the course of further development, within the range of human or civic rights, new symptoms became apparent also at times when the social position of the individual, in association with the evolution of social relations, was again undergoing a radical change, like in socialist society, or a less radical change, like in present-day capitalist society.

However, the range of rights once announced to be universal human rights, and declared to be safeguarded also by state action, just owing to its position occupied in bourgeois ideology, had changed so that the respect for it could be integrated into the principles of governmental activity, or by an inversion, from considerations of the efficacy of governmental activity, the patent violation of these rights could not be tolerated for any length of time. So thereafter the ideological and practical political considerations appeared intertwined to a degree that their segregation could not be *consciously* maintained in the course of governmental activity.

Still this last statement does not mean as if the ideological significance of the human and civic rights, their respect and actual practice, were in fact moving on the same level. It followed from the ideological significance of these rights that in most of the states they were laid down in the constitution, or even, with emphasis, in the form of a declaration. This legal form by itself raised certain problems from the point of view of the actual exercise of civic rights. As a matter of fact, in the course of evolution a peculiar relationship developed between the constitution often declaring principles only, and the rules of law governing the actual conduct of the subjects. A discussion of the problem of the specific legal character of constitutional provisions would go somewhat beyond the scope of this paper, still it may be pointed out that in practice very often the direct and actual enforceability of the constitutional provisions is called into doubt. There is a multitude of intermediary rules of law between subject and constitution. To these very often reference is made in the constitution itself in connexion with the one provision or the other, or when special legislation is quoted, with the

formula "within the limits set by the law" etc. and so for practical purposes an opportunity is afforded for the introduction of legislation departing from the constitutional provisions, or even narrowing these down. Marx, in a survey of the evolution of the French constitution, had already recognized this practice when he mentioned that although in its wording the French Constitution of 1848 contained freedom, however, in the marginal notes — and by these marginal notes the above formulated were understood — decreed the abolition of this freedom.⁴ Now the practical consequence of this situation is that on the constitutional level a whole range of human and civic rights can be guaranteed "without a risk", and at the same time the governmental machinery will avail itself of the means to apply these rights in actual practice in conformity with its actual or alleged needs, in a manner the technical-political element referred to above comes to be interpreted from a pragmatological point of view.

Before an assessment of the factual value of these theses, to be considered logical generalizations drawn from the historical evolution of human and civic rights, it appears appropriate to summarize the basic considerations for a concrete historical analysis. In the course of this analysis some of the concrete historical-social factors instrumental in the evolution of these rights will be explored by way of example rather than in an exhaustive form.

(a) Birth and evolution of the human and civic rights, as any other phenomenon in the sphere of law, are fundamentally determined by the social-economic conditions. Accordingly, these rights are subject to changes, i. e. are relative.

(b) Owing to the peculiarities of their historical origin, these rights have an ideological significance which is underlined also by certain experiences of political organization and statecraft. Consequently, irrespective of their actual implementation assessable in social practice, these rights are recognized and codified mostly on a constitutional level, if even with such modifications as may be required by evolution.

(c) Consequently, the changes taking place in social-economic relations will come to the fore in legal and social practice and in statutory provisions associated with, rather than incorporated in, the constitutional formulation itself.

(d) Phenomena in respect of the main trend of a secondary nature manifesting themselves in the formulation or practice of human and civic rights are related to the sociological phenomena of the society in question, and to the political phenomena determined by the former, the effects of which may be responsible for differences or fluctuations in the formulation of these rights and their translation into practice.

⁴ Karl Marx, The 18th of Brumaire of Louis Bonaparte. Works of Marx and Engels (Hung. ed.), Vol. 8., Budapest, 1962, pp 116—117.

2. THE PERIOD OF TRANSITION FROM FEUDALISM TO CAPITALISM; ITS EFFECTS ON THE EVOLUTION OF CIVIC RIGHTS

In the formulation of the human and civic rights, and their practical application already in the first stage of their evolution, specific traits may be observed in the particular countries. These cannot be ignored, and in author's opinion they are associated with the problems of the transition from feudalism to capitalist society.

The peculiar characteristics of the transition from feudalism to capitalism are basically determined by the rate of industrial development, its standards, and the significance of feudal survivals. It stands to reason that the effects of these factors manifest themselves in the formation of the class relations of society, which thereafter have a decisive significance on the evolution of the governmental and legal features of society. As a matter of fact, where, owing to the development of the means of production, the bourgeoisie came to economic (and therefore to political) power sooner, it could enforce the legal principles reflecting its interests sooner than the powerless bourgeoisie of economically backward countries. However, this is but one aspect of the problem. There are other factors too which had a role in the evolution of human and civic rights in a particular country. As a matter of course the foremost of these factors was the method of acquiring political power. In countries where the bourgeois revolution established the bourgeois political power at one stroke, the system of human and civic rights was incorporated in the bourgeois constitutions, with relatively undiminished significance, in conformity with the position occupied by them in bourgeois ideology. On the other hand where the bourgeois revolution ebbed down in a compromise (even when in the long run this compromise meant the political power of the bourgeois class), the evolution of the human and civic rights slackened down, and became rather tied up to routine governmental activities, so that eventually a process fraught with breaks and contradictions was the result.

The two processes as mentioned were of a basic character, however, in response to other factors further differences may be observed in the evolution of human and civic rights and their practical enforcement. The fact that e.g. the successful American War of Independence conferred independence and political power on the nation at a single blow, enabled the American nation now freed of the feudal traits encumbering English constitutional evolution to codify its constitution, and within it the human and civic rights, in conformity with the most advanced bourgeois political ideas of the age. This could be done although the peculiarities of English evolution affected also the former colonies, so that the respective principles of the Declaration of Independence to a great extent merely put the crown on the evolution which been making headway in the colonies for a century and a half.⁵ It is interesting to note that these political ideas had been taken up in the Constitution without limitations although, owing to the specific composition of American society, the interests of the Southern planter bourgeoisie conflicted with these legal principles to a certain degree. The situation was a peculiar one

⁵ *Handlin, O. and M., The Dimensions of Liberty. Cambridge, Mass., 1961, p. 26 et seq.*

also from this point of view. First of all the tillage of the plantations was not of a feudal character, i.e. it did not rely on serfdom, an institution which constituted a primary obstacle to bourgeois evolution in Europe, but on slavery. Although slavery meant a stronger bondage and exposure to the mercy of the master than did serfdom, still up to the second half of the 19th century it was not a retarding force, as serfdom was in Europe in the economic-industrial growth of American society. The reason was simply that the slaves were negroes who beyond the plantation had little influence on labour conditions, or none at all. However, ideological and legislative continuity could not be maintained for any length of time under the conditions of slavery, and soon it became evident that the provisions of the constitution did not apply to the slaves. Although the abolition of slavery had been put on the agenda when the constitution was drawn up, and e.g. Jefferson even put forward proposals for a formulation of the respective provisions in this sense, still the majority winked at the fact of slavery; moreover in Article 4, Section 2, Clause 3 of the Constitution provisions were taken up declaring that slaves taking refuge to a non-slave-holding state must be extradited to the owner, or in the modest wording of the Constitution "to the party to whom such service or labour was due". And this provision did not remain a dead letter. Justice Taney, in the notorious Dred Scott case, in 1857, based his sentence on this provision of the Constitution when he decreed the extradition of an ex-slave who had lived for many years already in a "free" state, to his former keeper.

A further effect of the ideas of natural law still alive at the time when the Constitution was drafted, manifested itself in experimental legislation during the first period of the evolution of law in America, in line with the traditional trend in bourgeois development. Roscoe Pound dealing with this period of the evolution of law in America finds the negative effect of natural law in that "undue confidence in the power of individual reason to discover the right rule led to neglect of history and, what was worse, to expecting too much of a single codifier".⁶

Since in the following stage bourgeois evolution in fact failed to develop in conformity with the principles of classical bourgeois ideology, it was by no means surprising that later on, the attacks launched against classical bourgeois natural law particularly after the establishment of the monopoly-capitalistic society, were directed in first order against its influence on constitutional law. This attack was to be expected anyway. The legal system of the United States did not break away completely from Common Law during the War of Independence, which meant that it was not severed completely from the methods and ideas rooted in Common Law. And the position of a written constitution is always problematic in a country otherwise adopting the system of Common Law, if only because as is known, English constitutional evolution, and in particular these embryonic civic rights relied rather on judicial practice. Roscoe Pound speaking of the relations of natural law, constitutional law and Common Law notes that the ideology of natural law led to the acceptance of natural law, and so to a notion of Common

⁶ Pound, R., *The Formative Era of American Law*, New York, 1950, pp 23–24.

Law which in its principal traits and characteristic principles loomed behind every constitution, as the embodiment of general principles. That is, certain principles of Common Law and the traditionally approved ideas of practice have been raised to a position above the constitution, and it was from the aspect of these principles and ideas that social legislation of the last decade of the 19th century and of the first third of the 20th were appraised.⁷ If therefore in the evolution of Common Law the principles developed in the course of judicial practice had assumed an ideological significance, these — particularly at the outset — expressed the classical bourgeois ideology. In the given case the conservative members of the judiciary and of the bar could make and even made use of the classical conception which had acquired ideological significance in certain principles of Common Law, against state activity expressing new conditions. On the other hand, the peculiarities of Common Law often helped to take a position even against classical bourgeois ideology, as was shown by the example of the *Dred Scott* case.

This development is extremely characteristic. The plethora of legislation after the American War of Independence became firmly established in first order in the constitutional field, and in like way as the Constitution had as its end the perennial and unchangeable consolidation of the new order. It may be noted here that at the beginning enactments were introduced also in concrete cases brought before the court.⁸ Such legislation, against classical natural law tendencies, yielded to the tendencies characteristic of Common Law, which did not favour rational legislation, and which in the words of Roscoe Pound could be described by that the second half of the 19th century became disappointed of legislation. As a result of this process case, law came into prominence even in the sphere of constitutional law, and by this the various traditional principles of Common Law became extra-constitutional. At the end of the century, this process made it possible to interpret the human and civic rights not wholly conforming to the spirit of the constitution as partly expressing the new, developing ideas, partly the ones still suiting the conservative forces.

So the practical political element expressing the feudal remnants, in America weighted with the institution of slavery and growing into bourgeois society, frustrated the enforcement of civic rights in their ideological purity, even where bourgeois political evolution broke away from the evolution of the feudal state. On the other hand, during the 19th century, certain progressively increasing traits of the primordially bourgeois institution of civic rights also turned up. This was of course consequent on the economic and political position of the bourgeois class, however, to some extent also because of the experiences in statecraft and organization asserting itself as a "technical-political" element in governmental activity. These experiences manifested themselves already with a certain ideological coercive force even in states where after abortive bourgeois revolutions, based more or less on a compromise, they continued to develop in conformity with

⁷ *Op. cit.* pp 26–27.

⁸ *Op. cit.* p. 38 et seq.

feudal absolutism, even though on an increasingly bourgeois social platform. A highly characteristic reference is made to this evolution in a recent German work on history of law. "The fundamental rights which can be found in the German constitutions of the 19th century, and the Reich Constitution of 1919, conformed not only to revolutionary tendencies and to speculations of natural law. They rely nearly as firmly on medieval German legal' opinions. Here only the autonomy of the towns has to be borne in mind, or the charters which directly granted rights to the estates of the realm. The whole evolution of law can be understood only by setting out from the fundamental idea that the State did not guarantee these freedoms as such as were born together with man, but only recognized and so guaranteed them."⁹ This fundamental idea which Hans Fehr stresses against the revolutionary origin of civic rights, is of significance, for it actually expresses something of the continuity of the technical-political element in the growth of civic rights in Germany, although certain German writers consider even this evolution of law unhistorical.¹⁰

However, the unhistorical character of this concept manifests itself in first order in a concept which places Medieval German municipal law and charters unconditionally on an equal footing with the civic rights. It is beyond doubt that notwithstanding the continuity of the "convenience" element, evolution in the German formulation of civic rights was after the second half the 19th century altogether different from the traditional German ideas of law as expressed by the Medieval charters. Already the appearance of the term "citizen" in German law reflects a change of contents.¹¹ In fact it reflects bourgeois social conditions which gathered strength notwithstanding the unsuccessful bourgeois revolution.

The evolution of constitution in Germany, and within this the social factors of the peculiar evolution of civic rights, can perhaps be best understood from the analysis of the German status quo by Engels, according to whom in France and England the town dominated over the village, whereas in Germany the village dominated over the town,¹² or from the statement according to which in the first half of the 19th century a new class, the petty bourgeoisie, had come to life in Germany, whose political tendencies were of course not identical with those of the bourgeoisie. As Engels believed, the petty bourgeoisie represented local,

⁹ Fehr, Hans, *Deutsche Rechtsgeschichte*, 5th ed. Berlin, 1952, p. 233. This opinion was fairly widespread in the post-War German literature on the history of law. Mitteis e.g. writes that with the segregation of the political and private spheres those freedoms were born first in the German town which have survived in the fundamental rights of modern democratic constitutions. (Cf. *Mitteis*, Heinrich, *Deutsche Rechtsgeschichte*, revised by Heinz Liebericht, 5th ed. Berlin, 1958, p. 160.)

¹⁰ Such an unhistorical idea underlies the reforms of the states of the Rhenish Federation, in the opinion e.g. of Hartung, See *Hartung*, F., *Deutsche Verfassungsgeschichte*, Leipzig—Berlin, 1933, p. 126.

¹¹ In all-German relations, and officially, this term was first used (instead of the former term "subject") in "The Fundamental Rights of the German People" of 1848.

¹² *Engels*, Fr., *The Status quo in Germany*, Works of Marx and Engels (in Hung.), Vol. 4, Budapest, 1959, pp 41—42.

the bourgeoisie universal interests. The petty bourgeois accepted a situation where by the side of an indirect influence on state legislation he was allowed to take a direct share in provincial, or in his own communal, administration. The bourgeois could not guarantee his own interests unless he had direct and permanent control over the central administration, foreign policy, legislation. The classical creations of the petty bourgeois were the German imperial towns, while the classical product of the bourgeois the French representative state. The petty bourgeois turned conservative as soon as the ruling class had granted him the slightest concession, the bourgeois was revolutionary until he had come to power.¹³

Thence the "medieval", "historical" trait in the early manifestations of civic rights in Germany, which was characteristic of the German constitution and within this of the evolution of civic rights, partly owing to the marked petty bourgeois aspect of the German bourgeoisie, partly to the survival of feudal elements, even at a time when the bourgeoisie had already come to power. In the German constitutions dated before 1848 the "medieval" or "historical" trait may be summed up in that these rejected the revolutionary doctrine of popular sovereignty, and emphasized the monarchical character of government. The only exception was the Constitution of Württemberg of the 25th September 1819, which was not a "royal gift" but a "contract". However, neither this constitution relied on the principle of the people's sovereignty, in fact it was a contract between King and Estates, and simply confirmed "good old law".¹⁴ And reference to old law was by no means an ideological characteristic of the bourgeois evolution of law, but a phrase recurring in the various feudal charters. In fact, if it is admitted that in the evolution of civic rights a certain approach of "convenience" was predominant in Germany, then this evolution could advance only step by step, by the recognition of one right at a time.

The truth of this statement will become immediately obvious when the various German constitutions are studied from this aspect. According to Mitteis civic equality was realized in Germany during the 19th century on three planes:

1. On the intellectual plane, already from 1815, when equal rights were guaranteed to all Christian denominations under Articles 16 and 18 of the Bundesakte (the Charter of the German Federation), (the emancipation of the Jews was not completed before 1869, and the last restrictions of the freedom of the press were repealed only in 1874).
2. Political equality, which after the emancipation of the serfs became true with the abolition of the privileges of nobility (remnants of these survived until 1919).
3. Economic equality of rights which too was realized step by step, in the course of the emancipation of the serfs, the freedom of trade (completed in 1869) and the abolition of the privileges of merchants.¹⁵

¹³ Op. cit. p. 43.

¹⁴ Hartung, F., *Deutsche Verfassungsgeschichte*. Leipzig—Berlin, 1933, pp 128—129.

¹⁵ Mitteis, H., op. cit. p. 200.

The civic rights taking shape under the conditions of the German Bund and then the German Reich, marked only, if step by step, the progress of the German bourgeoisie in the initially strongly feudal Junker-bourgeois alliance. The fundamental rights proclaimed in the revolution of 1848, which in the conventional manner expressed the interests of the now victorious bourgeoisie on an ideological level, were by themselves of a purely declarative character. The governments of the German states made attempts to evade a direct statutory enforcement already during the period of the revolution. After the revolution again evolution defined by direct political practice or statecraft came into prominence, in association with the economic interests of the bourgeoisie and the political interests of the heterogeneous sovereign power, in the peculiarly conditioned social circumstances which — from the position of the German bourgeoisie — Thomas Mann so aptly called “the power-protected intimacy”.

The peculiarities of the German path of transition from feudalism to bourgeois society resulted in the sphere of civic rights in narrow-mindedness and retarded evolution. This evolution whose content and trend bore the marks of compromise with the monarchical power and nobility, and the marks of opportunism throughout, eventually brought about a situation where the idea of human and civic rights could not become a force even under the formal freedom of the Weimar Constitution, so as to put up resistance against the national socialist state which on the plea of expediency simply denied the justification of these rights on all levels. This was the case not in last resort because the German bourgeoisie became a social-political factor at the threshold of the age of imperialism, when its interest and its attempts to invade the world market were not only reconciled to the monarchical imperialist policy, but even insisted on such policy.

In addition to this, the statement may be ventured that — as to civic rights — the German states reached the stage where French evolution had arrived at the end of the 18th and early 19th century, after a lost war and a revolution, i.e. under essentially different class and social conditions. So obviously German evolution remained “below criticism”, and meant “anachronism” and a “dust-covered fact”. Moreover, certain provisions of the Weimar Constitution, and particularly those relating to civic rights, bore the shadow of feudalism so as to arouse the pride of German bourgeois historians. This belatedness was the cause why even within a bourgeois framework German evolution could not keep abreast of the exigencies of the age, and was short of the conventional claims of the bourgeoisie as regards civic rights.

English evolution in the sphere of civic rights may be described as highly peculiar. It would be hard to analyse all social and ideological factors of this evolution. All that is certain is that owing to its geographical situation a strong English merchant class and bourgeoisie of artisans understood to salvage the privileges achieved by the burghers under feudal conditions and against royal power, to turn these into civic rights, which in the course of evolution took on a bourgeois character in their content. However, the question may justly be asked, whether at the time of the birth of these rights or privileges, or in the initial stage of their

evolution, these were civic rights in the sense of classical bourgeois ideology, or whether it would be more correct to judge the evolution of English law from a certain reflective approach. Gerhard Ritter, writing of the English revolution of the 17th century makes the statement that it was directed against the tendencies of the Stuart dynasty to build up an absolute monarchy. Here for the Estates of the Realm freedom meant nothing more than the defence of rights once granted against the encroachments of royal power. Looking back from the position of the present age this tendency directed against the creation of a centralized state (representing a higher stage of development) may also be interpreted as the struggle of the past against the present. However, this struggle had a trait which subsequently was to influence English evolution considerably, viz. the fundamental principle of the *sanctity of law*, i.e. that law stood above political power, above alleged or real "raison d'état". Here freedom meant the guarantee of positive, promulgated rights against political power, and in this process the institution of the Bar and the Parliament acquired a significant role in the struggle against despotism.¹⁶ In England first the so-called Agreement of the People of 1647 spoke of the innate rights of the Englishman, and quoted like all subsequent bourgeois revolutions, also natural law. However, as Ritter notes, this reference to natural law still moved on the plane of the historically developed privileges. The true change took place not in England, but in the 18th century through the activities of the forerunners of the French Revolution in literature and philosophy, when "rational thought stood up against historical thought".¹⁷

The evolution of civic rights in England is characterized by traits resulting from the political practice born from, first, the struggle between Crown and Estates, and then between Crown and Parliament. The ideological element expressed rather the priority of law as opposed to sovereign power than the inalienable character of the civic or human rights, or their sanctity, superiority above power. This purer variant of the domination of law, in association with the role of the judiciary, then created a peculiar ideological and legal position. Historical continuity was of course formal in many respects. In fact English writers on constitutional law in general ignore that the bourgeois revolution (even when followed by a formal restoration) progressively introduced changes in the content of old institutions of law outwardly unchanged. In any event it may be recorded as a fact that some of the enactments associated with civic rights from the period after the Revolution in a parlance reminiscent of the feudal charters harked back to the "old rights" even when they were intended to enforce new demands. Dicey even mentions that e.g. the Petition of Rights or the Bill of Rights, which formally may perhaps be compared to Continental declarations, essentially are not "so much 'declarations of rights' in the foreign sense of the term, as judicial condemnations of claims or practices of the Crown, which are thereby pronounced illegal" . . .¹⁸ In fact there are no solemn declarations of civic rights in English constitu-

¹⁶ Ritter, G., *Vom sittlichen Problem der Macht*. Bern — München, 1961, pp 62—63.

¹⁷ Op. cit. p. 64.

¹⁸ Dicey, A. B., *Introduction to the Study of the Law of Constitution*.

tional law. English jurists continually emphasize that these rights may be derived from judicial practice, i.e. they are not *enforceable theses of law*, but may be abstracted on hand of their enforced character. "We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts...", and to this Dicey adds: "Parliamentary declarations of the law such as the Petition of Right and the Bill of Rights have a certain affinity to judicial decisions."¹⁹

English lawyers set high value on the factual character of rights developed by judicial practice as against the exigencies of constitutional declarations, and the statement may be safely ventured that in many respects they clothe these rights in a mystic shroud. Although Dicey emphasizes reality when he suggests that the practice of law be studied and not the declarations,²⁰ his approach of the question nevertheless remains a narrow one, for he fails to penetrate into the social practice behind the legal practice, whereas law materializes in the former.

3. PROBLEMS OF CIVIC RIGHTS AND JUDICIAL PRACTICE

Although the realization of a legal rule within society depends only in part on the practical application of law — in fact social circumstances from the very first shape human behaviour in conformity with law — still in the case of civic rights legal practice has an extremely significant role. However, the function of judicial practice so readily quoted by English writers on constitutional law as the prime mover and originator of the rights of Englishmen, cannot be restricted in its operation to civic rights outside the sphere of legislation or declarations. This holds e.g. exactly in the case of personal freedom declared in the Habeas Corpus acts, which is law *in so far it is actually transplanted into reality*. If therefore the courts courageously make use of the weapon of a writ of Habeas Corpus against the unlawful acts of the government, then this tool for safeguarding personal freedom will in fact be reassuring. The problem therefore lies in the approach, i.e. the political approach of the judiciary. Among the social factors which are instrumental in the process of enforcing civic rights there are elements beyond the statutory provisions introduced by the sovereign power, such as the character, spirit, traditions of the judiciary, associated with the relations between the administration of justice and politics. English lawyers always emphasized the character of a political means of defence of the Habeas Corpus Acts, and it was just Dicey, who pointed out that with this tool on hand the courts can interpose their veto

¹⁹ Op. cit. p. 185.

²⁰ Op. cit. p. 196: "The proclamation in a constitution or charter of the right of personal freedom . . . gives of itself but slight security that the right has more than a nominal existence, and students who wish to know how far the right to freedom of a person is in reality part of the law of the constitution must consider both what is the meaning of right and a matter of even more consequence, what are the legal methods by which its exercise is secured."

against unlawful acts of the government. Obviously, *the political outlook and role of the judiciary* come into prominence. According to the classical English conception the judiciary with its legal character is not a political organ, and its essential function is to safeguard personal freedom against the encroachments of the government. Unfortunately there are flaws in this conception at two points. First of all, law from its beginnings is an expression of political power, so that a legal character independent of politics is a contradiction. Secondly, a contemplation of the judiciary as segregated from the totality of the governmental mechanism, or as deprived of the political character of the state, would — to say the least — lead one to erroneous conclusions. The relationship between the judiciary and politics is of course not a wholly simple affair. If politics are conceived from the aspect of every-day party politics, then it may be accepted that often and in specific ages or societies the judiciary could administer justice independent of party strife. Still this does not amount to political independence. It stands to reason that the judiciary is part and parcel of the governmental mechanism, so that its content is defined by the general policy manifesting itself in the entire governmental mechanism, i.e. by the practice expressing the political conditions of the class, and within this of the layer, which directs the governmental mechanism. So that the activities of the judiciary are of an express political character. Engels was not the only one who mentioned the class character of the activities of the English judiciary,²¹ in fact statements may be quoted also from present day bourgeois theory of law. According to B. W. Friedmann, the illusion as if the judge could ignore the social or political repercussions of a case to be tried is still fairly widespread in the "democracies", notwithstanding the warning of a number of lawyers. Friedmann quotes the opinion of Lord Justice Scrutton, this most learned and at the same time most conservative member of the Bench on this problem. "... the habits you are trained in, the people with whom you mix, lead you to having a certain class of ideas of such a nature, when you will have to deal with other ideas, you do not give as sound and accurate judgments as you would wish ... It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class" ...²²

However, it is evident that the fetters of the political conditions resulting from the dominant social conditions tying down the judiciary will come into prominence also in the judicial practice of civic rights. That is, not even the highly praised peculiarities of English constitutional law will guarantee absolute safety of the civic rights, even when beyond doubt they mean more than solemn continental declarations. In fact, particularly considered in connexion with politics this is where the position occupied by the applicant of the law, in first order the judiciary, the peculiarities of its management and organization, will come to the fore.

²¹ Engels, Fr., *The Situation of the Working Class in England*. Works of Marx and Engels, (Hung. ed.), Vol. 2, Budapest, 1958, pp 459—460.

²² Friedmann, B. W., *Law in a Changing Society*. London, 1959, p. 59.

As for the civic rights, and in many respects *only* as for civic rights, Imre Szabó's statement will hold, according to which the dominant legislative will is not expressed clearly and in an unambiguous manner in the rules of law, so that the interpretation of these rules will particularly come into the limelight.²³ In the construction given to the rules of law then the many traits or characteristics of the interpreting organ will find expression. It may be added that in the expression of the actual ideological content of the rules of law, the many factors instrumental in the process of the application of law will introduce differentiations not only in the actual content of the rules, but beyond the rules, also into the elements issuing from governmental or political factors. This provides an occasion e.g. for English lawyers to invest the judiciary with the character of a guarantor of civic rights, simply because it was a central agent in the formulation of civic rights. It would be worth while to analyse this problem from close quarters, merely because it may be instructive in a study of the social factors cooperating in the development of civic rights, and particularly because it may be significant from the point of view of guarantees. This is in fact the case just because in England civic rights are not guaranteed by specific constitutional declarations, thus the pertaining rules of law could be repealed by Parliament by a simple vote. Their existence is due to simple judicial decisions, so that the problem of guarantees also points to a sphere beyond the rules of law. Cartwright summing up the problem of civic rights as far as England is concerned in a recent volume²⁴ points out with emphasis, and with great logic, that in England the guarantees of the human and civic rights depend on the courts. That the courts are in reality not only guarantors of the fundamental rights, but at the same time their guarantee lies, in his opinion, in the *specific character of the English judicial system*. He emphasizes that since the Act of Settlement of 1701 English judges are wholly independent, and for practical purposes irremovable. During the past centuries English courts produced evidence of their capacity to supervise the acts of the executive power for their legality, and prevent the abuse of power. One of the reasons thereof may be discovered in the traditions and the corporate spirit of the English judiciary. English judges, Cartwright points out, are not official functionaries, but former barristers who have attained the highest summit of their profession. Their education, experiences, etc. tie them down to the spirit of independence, to human integrity, to human freedom and to the cause of the defence of the individual against superior powers. Common Law courts were the allies of Parliament in its struggle against royal and executive power, and it was due to the cooperation of the courts of law that

²³ Szabó, I., *A jogszabályok értelmezése* (Interpretation of the rules of law). Budapest, 1960, p. 13. *Freiherr v. Heydte* considers the interpretation of the constitution an inevitable means of a tacit change of the constitution, in his work: *Stiller Verfassungswandel und Verfassungsinterpretation* (Archiv für Rechts und Sozialphilosophie, 1951). In his study he starts from the assumption that all positive law is tied to a specific situation, therefore it is variable, and that the provisions of the constitutions have their origin in specially defined concrete historical conditions (op. cit. pp 461–462).

²⁴ *Essais sur les droits de l'homme en Europe*. Première série, Torino, 1959.

Parliament was victorious at the end of the 17th century. English judges administered justice always in the spirit of independence and impartiality, they stood above the political amphitheatre, they watched over the rights of the individual and also saw to it that the executive power exercised its power only within the statutory limitations. And that this could be done in conformity with the principle of the Rule of Law may be explained also by that everybody acting in the name of the executive power was in person responsible before the law for his acts performed during the execution of his official duties, in the same way as if he had acted as a private person.²⁵

The presentation of the case by Cartwright is idealized in many details. However, for the present purpose it is significant that he is looking for the guarantees of the enforcement of civic rights in the mechanism of the administration of justice capable of shaping an appropriate forensic practice, and not in statutory guarantees. And this he associates also *with facts* which are *outside* the sphere of statutory regulation, and not only with the formal *organization* of the judiciary, i.e. with its legal structure. It is clear to us that the value of statutory guarantees in fact lies in the practice of their enforcement, and this practice is connected with *meta-juridical* factors. It is an altogether different question within which sphere these metajuridical factors can be defined. Obviously, e.g. when beyond the organizational structure of the English judiciary Cartwright makes reference to its historically developed traditions, corporate spirit, etc. — though these characteristics appear to be beyond grasp — yet they are factors having certain sociological realities, whose actual value, viewed from a wider aspect, depends on the sociological reality of English society as a whole. This notwithstanding, still the elements quoted by Cartwright may have some significance. For instance, it would be in vain to look in the history of Hungarian courts for such elements as would have shaped a tradition actually safeguarding the rights of the individual, or a trait distinguishing the vocation of a judge from the practice of law by civil servants. However, this single element of social reality should in no circumstances be treated as decisive. At least as far as the social effects are concerned, Jackson, one of the chief prosecutors in the Nuremberg trial, subsequently member of the Supreme Court of the United States, could aptly remark that “. . . those judgments fell on deaf ears and became dead letters because the political forces at the time were against them”.²⁶

This position is by far more realistic than the one taken by Cartwright, or the degree of the realistic character of Cartwright's position could be assessed by reverting to a remark made by Jackson. The latter draws attention to the resistance in English press which arises whenever the government or Parliament makes the slightest attempt to restrict human rights or the rights of minorities. His conclusions deserve attention: They do not wait for the theory according to which the judges

²⁵ Cartwright, H., *Droit de l'homme et les libertés fondamentales en Grande-Bretagne*. Op. cit. pp 43–46.

²⁶ Jackson, R., *The Supreme Court in the American System of Government*. Cambridge, Mass., 1958, p. 81.

have to safeguard these rights. He adds that in the United States exactly the opposite attitude may be observed. Attacks directed against human rights have hardly any political repercussions, here everything is expected from the judiciary.²⁷

That is to say, the problem of the guarantees of civic rights carries the student far beyond the rules of law, the organization of the judiciary, or legal practice. The essence of the problem lies in society itself, in its manifold political relations, institutions, etc. Various elements of this social reality, in the wider sense, cooperate, some more, some less, or even counteract one another, in the practical enforcement of civic rights. Beyond the statutory guarantees the formal elements and content of the judicial organization may act in combination, here included the traits resulting from the universal sociological properties of such organizations, the attitude of the judge, where a number of factors may operate, and also the factors which reach the judge from state control through a variety of channels. Rules of law, as has been confirmed by the history of civil liberties in a convincing manner, have no exclusive significance. Concrete social reality will find its expression in the enforcement of civic rights in one way or other. Of course in concrete social reality again several elements may be active. So it becomes understandable that actual conditions in the United States insist upon a restriction of human and civic rights rather than in British society.

For that matter it is characteristic of the situation that in the two countries of allied systems of law, viz. the United Kingdom and the United States, where the courts have acquired particular prominence in the protection of human and civic rights, differences are sought just in the relationship between politics and these rights. Jackson, federal judge of the U.S. said that in England the respect for civic rights was good policy, whereas the violation of the rights of individuals or minorities was bad policy. He added that the same could not be said of the United States, where the support of the Supreme Court coming from an energetic and enlightened public opinion was necessary for the safeguard of civic freedoms.²⁸ And though Roscoe Pound quoting the words of Jackson emphasized that the traditional respect for law, the expectation that things would go on as prescribed by the law and in particular by the Constitution, was a trait of American public opinion, the opinion of Jackson was closer to reality. This is confirmed by the political and legal practice of the period following the Second World War. And if at the first glance it might appear as a far-driven generalization (especially when the manysided relationship between politics and law is known), still for the sake of clarity the statement may be ventured that in England the problem of human rights presents itself perhaps more directly *in the legal form*, whereas in the United States the problem is more directly *a political one*. (In point of fact, in the United States the legal activities of the Supreme Court are more directly determined by politics.) This difference is to a certain extent explained by discrepancies in the growth

²⁷ Op. cit. pp 81 – 82.

²⁸ Pound, R., *The Development of Constitutional Guarantees of Liberty*. New-Haven and London, 1963, p. V.

of the two countries. In America, the evolution of civic rights, their enforcement, etc. are more exposed to direct political influences than in England. As the outcome of the differences in the historical growth of the two polities, in the United States civic rights are defined by declarations or the Constitution, or its several amendments, i.e. by express political acts, whereas in England they are of a legal character to an extent even beyond the role of judicial practice. Jennings, the famous English constitutional lawyer could justly say that the nature of freedom could be discovered only by a study of the limitations which the law had imposed on it.²⁹ (Of course, essentially the English variants of human and civic rights are as well the expression of politics as the American variants), not to speak of limitations inherent in the social conditions. However, in the form of legal manifestation there is a difference amounting to historical-social content. As an English work on constitutional law expresses, the citizen may go wherever he wants, and may do or say whatever he wants, until he does not infringe the provisions of penal law or the rights of others. And when others infringe his rights then he may take recourse to the remedies guaranteed by the law. Also the means to which the citizen may take recourse for the safeguard even of his political freedom, when this is violated by agents of the executive power or a co-citizen, are incorporated in criminal or contract law, i.e. in sections of the ordinary law of the country and not in some sort of a fundamental constitutional law.³⁰ This conception too reflects the social form of law which has brought about the differences in the evolution of human and civic rights in the United Kingdom and in America. In America the legal guarantees of the human and civic rights are vested in the Supreme Court, i.e. a court of an express political character, and directly exposed to political influences, in its function of a constitutional Court. H. C. Evans writes that the functions of the Supreme Court consist in maintaining the balance between the constitutional safeguards of freedom, and the legislative requirements devolving from the interests of social order.³¹ This function, which also includes the doctrine of the judicial supervision of rules of law, is obviously a political one, and goes beyond that sense of the term "politics" which expresses universal and fundamental social conditions (of which law too is one of the tools). It is exactly the history of the Supreme Court of the United States which shows to what extent constitutional jurisdiction including the interpretation of the rights

²⁹ Quoted by *Cartwright*, Hilary, *Droit de l'homme et les libertés fondamentales en Grande-Bretagne. Essais sur les droits de l'homme en Europe*. Première série, Torino, 1959, p. 46.

³⁰ *Wade*, E. C. S., and *Philips*, G., *Constitutional Law*, 6th ed. London, 1961, p. 464.

³¹ *Evans*, Hughes Charles, *The Supreme Court of the United States*, New York, 1928, pp 160—163. The function referred to by Evans assumed a fairly uniform expression in the 'fifties, against civic rights. In an article published in *Harvard Law Review* on the 1951 term of the Supreme Court, the following may be read: "As in the previous few years, the Supreme Court in the 1951 term repeatedly faced the difficult problem of choosing between the demand of the State for security against subversion and the demands of individuals for protection of rights claimed under the Constitution. And, as in previous years, the Court for the most part upheld the legislative measures taken to achieve security." (Supreme Court, 1951 Term. *Harvard Law Review*, 1952, No. 1, p. 104.)

of the individual depend, beyond the exigencies expressing the given stage of the evolution of society, on secondary sociological factors, political events and influences coming from certain vested interests. As has been seen, actually not even bourgeois authors consider the judiciary an organ independent of politics,³² and it is an on the whole accepted opinion that this highest judicial body of the United States is a political organ, meaning also direct policy-making. G. A. Schubert e.g. writes that "... decision-making of Supreme Court justices is political in the sense that the primary role of the court is to make public policy",³³ and to confirm this he quotes several similar statements. Still his book clearly confirms this fact, underlining all *a priori* statements. Here by taking recourse to concrete data and the tools of arithmetic it is shown to what extent decisions brought in a specific case are determined by political events, the allegiance to a certain party or opinion, and beyond this the adherence to certain groups or blocks formed within the court. Moreover, in direct opposition, e.g. to Evans who says that if conscientious, apt and independent persons are put in the judge's bench, it is impossible to predict their activity as a judge either on the base of their adherence or their personal or party loyalties.³⁴ Schubert is not the only writer who expressly undertakes something what Evans believed was impossible.³⁵ The lobby-like influencing of the court, in particular with the aid of the legal institution called *amicus curiae*, is a problem today analysed even by political science.³⁶ Obviously, in the works and investigations of the bourgeois authors here quoted, and also of others, the political character of the Supreme Court is associated with secondary

³² Friedmann, W., *Law in a Changing Society*. London, 1959, pp 61 – 62.

³³ Schubert, G. A., *Quantitative Analysis of Judicial Behavior*. Glencoe, 1959, p. 10. According to the late judge of the Supreme Court, Frankfurter, it is the interpretation of the Constitution that compels the Court to "translate" politics to judgements, and the checking conceptions of the judges finding expression in this way have their origin in the "idealized political picture" of the existing social order (*Frankfurter, F., Landis, J., The Business of the Supreme Court, A Study in the Federal Justice System*, New York, 1928, p. 310). Since then in the wake of the studies of Schubert, and also of other authors, the power politics and group interests also emerge form behind the "idealized political picture" moving the judges.

³⁴ Evans, H. Ch., *The Supreme Court of the United States*. New York, 1928, p. 49.

³⁵ Cf. e. g. Kort, F., *Predicting Supreme Court Decisions Mathematically; A Quantitative Analysis of the "Right to Counsel" Cases*. *American Political Science Review*, 1957.

³⁶ Cf. Vose, Clement E., *Litigation as a Form of Pressure Group Activity*. *Annals of the American Academy of Political and Social Sciences*, 1958. Truman, D. B., *The Governmental Process. Political Interests and Public Opinion*, New York, 1951, stated that e.g. since the beginning of the history of the United States judicature was thought something standing above political and power strife. Then he proceeds to prove that courts, even the highest judicial organizations, were under the influence of the groups of interest in various ways (op. cit. pp 479–482). Truman also called attention to factors which so far escaped thorough study, and which resulted from the group character of the courts itself. Studies in this sense have since been carried through by Glendon A. Schubert, too. His findings may be read in his work quoted above. For the importance of social and political factors instrumental in judicial decisions see Schubert, G. A., (Ed.) *Judicial Decision-Making*, Glencoe, 1963. (Collection of studies.)

elements, i.e. with the current interpretation of politics as everyday politics. Viewed from a more universal sense of politics, expressing the fundamental social conditions, the political allegiance of the courts of law, and in particular of constitutional courts, cannot be disputed at all.

A court tied up with current politics cannot be considered a satisfactory guarantee even on the highest level when the rights of the individual are concerned, although it may nevertheless present certain positive traits from the point of view of guarantees. Or more clearly, the guarantee character of its activities is granted until the social and political forces manifesting themselves against specific rights take a shape in general (e.g. against the unrestricted freedom of contracts). The same limitations arise when such atmosphere develops which urges the introduction of greater or lesser restrictions and, with the appropriate influence, puts these into practice (e.g. at the time of the McCarthy inquiries).

4. METAMORPHOSIS OF THE CONTENT OF CIVIC RIGHTS IN THE 20TH CENTURY

For the study of the social factors instrumental in the evolution of civic rights, the process starting in the closing years of the 19th century and making its effects felt also in legal phenomena, lends itself in a particularly convenient form. This process is defined by monopolization, and the economic and social conditions created by the formation of new monopolistic organizations. In this process the human and civic rights have undergone visible changes. These changes are reflected by statutory provisions, certain recent constitutions, however, overwhelmingly by the judicial and administrative practice affecting these rights. The actual process of transformation has elicited highly interesting standpoints from bourgeois philosophers, lawyers, and sociologists, not to speak of practical politicians. These standpoints at the same time indicate the trend of the "revaluation" of human and civic rights. When here the standpoints of those rigidly adhering to the classical construction of these rights are ignored, the trend may be said to be a dual one. Traces are found of an approach, which "realistically" appraising the implementation of these so often declared human and civic rights, incorporated in most diverse rules of law, from the very outset conceives them as Utopian, and stamps them as the humanitarian, yet unreal, or even naive claims of the past and of the 18th century. Reality has confirmed — this standpoint maintains — that these rights are unrealizable, at least under the given social framework. Another view — already quite widespread — attempts an adaptation of the fundamental rights to the changed conditions.

The first approach is one of sociology, and surprisingly it appears in the work of Lester Ward, who saw the function of sociology as the science forming the underlying principle of statecraft in its conscious shaping of society, and professed that human rights whose chances of realization he denied from the very outset

were merely the obstacles to the formation of a scientific society.³⁷ Of late Henri Lévy-Bruhl, the famous French sociologist who thought that legal equality was also a myth, referred to a certain ideological significance of these rights as one masking sociological realities, and by this bringing them into prominence. The humanists of the Age of Enlightenment, wrote Lévy-Bruhl, declared human rights to be above the State and perennial: Man's due from the beginning merely by the fact that he was Man. However, this egalitarian approach of the problem was apt to cover up a lot of other inequalities, although these degraded legal equality to a myth embodied in written rules of law. He emphasized that there was and could be no legal equality among men who were separated by far-reaching economic differences, in that the one had capital, the other had none. It was imaginable that a contract between the parties relied on equality. However, a contract between employer and worker based on equality was out of the question. In criminal jurisdiction a rich man of influence could achieve much which was out of the reach of a poor man. The situation of a man belonging to the lower classes would be even worse. For example, for a wealthy woman perfectly safe induced abortion was within reach, whereas a poor girl was forced to take recourse to primitive methods and exactly for this reason the law would have her and treat her like a criminal. The principle of equality could not assert itself in the face of economic inequality, there was no legal equality, at least without an inkling of economic equality. It was often heard, he continued, that the law was lagging behind reality. In this respect the situation was the opposite: here the rules of law preceded reality, and could be conceived as targets. Law could not tear away from facts, and could not guarantee equality against actual inequalities.³⁸

This approach reflects reality better than any other, it is also a rare occurrence and to a certain extent explained by that it is rooted in sociology. It is evident that a penetration behind the formal rules of law provides the means for a certain approximation of reality. There is, of course, nothing new in it for Marxist research workers, except the way of approach itself, which will strike as a novelty. However, the pressure of reality will find an expression in another way in the theory of law and politics, and here the other theoretical attempt, the "*revaluation*" of *civic rights*, may be quoted as an example. Earlier an example was quoted from the sphere of legal equality. In the following discussion authors will be reviewed who made attempts at a revaluation of freedom.

Here we allude to the attempt by Oscar and Mary Handlin who, though not setting off from entirely new principles, still have completed the re-interpretation of the concept of freedom conforming to modern conditions. (The attempt is interesting because a content suiting modern requirements have been given to old

³⁷ Ward, L. F., *Dynamic Sociology or Applied Social Science*, 2nd ed., Vol. I. New York, 1897.

³⁸ Lévy-Bruhl, H., *Le mythe de l'égalité juridique*. *Cahiers internationaux de Sociologie*, janvier—juin, 1955, pp 8—16. In this connexion perhaps the young Marx may be quoted, who recognized these facts already in the forties of the 19th century. (*Marx, Karl, On the Jewish Question*, Works of Marx and Engels (in Hung.), Vol. 1, Budapest, 1957, p. 356.)

principles.) In their opinion the original, negative concept of freedom, i.e. the one meaning freedom from restrictions, flowed from the direct struggle against feudalism.³⁹ On the other hand the time which has lapsed since showed that the concept of freedom meant something positive rather than the mere lack of restrictions. From all this the two authors conclude that only the man was free within whose power it was to act or cause others to act, i.e. freedom consists in the use of power and not in a negation.⁴⁰ I.e. it was easier to understand American freedom if the primary conditions of the use of power were considered such as e.g. that political power had to be organized and exercised within definite procedures; secondly, there are limits beyond which power ought not to be used, and thirdly, that such power may be used for some particular ends and not for others.⁴¹

From the outlook manifested in the formulation of the problem the further conclusion followed that, at least in America, human rights derived from practice and not from speculation, so that it was impossible to draw up some sort of a reasonable catalogue of human rights. In fact under the pressure of social conditions even rights declared in greatest purity would fall into oblivion, or become blurred, or their content may change beyond recognition.⁴² I.e. the revaluation of the concept of freedom would eventually lead to a revaluation of civic rights. As a matter of fact the rights of the American constituted no impenetrable barrier to governmental action. Partly these rights were not clearly defined, partly they were not unchangeable at all. What remained therefore, one could ask? "Not the contents, but the conception of rights itself. Indeed, the very flexibility in adjusting to new conditions may well have strengthened the underlying idea that the citizen retained rights that set limits to the power of the state to act." These limits can be expressed by that the sovereign power protects individuals, and not groups, members of groups, or associations.⁴³

Yet this last conclusion does not conform to reality at all. Even many bourgeois authors recognize the allegiance of the State, if not to class, at least to some sort of group interests. Still even apart from this (in the conception of the Handlins important) question of interpretation, boils down to a replenishment of the content of the concept of civic rights, and in conformity with social reality this is defined by the existence of various groups. Actually the conception is making headway that a more complete freedom of the individual is guaranteed by the very existence of a variety of corporations.⁴⁴

On the plane of ideas, in the sphere of thinking on human and civic rights the most significant new phenomenon is this latter change. With it the juxtaposition of Individual versus State, this essential constituent element of earlier bourgeois ideology, has been resolved by progressively recognizing the otherwise sociologi-

³⁹ *Handlin*, Oscar and Mary, *The Dimension of Liberty*. Cambridge, Mass., 1961, p. 14.

⁴⁰ *Op. cit.* p. 18.

⁴¹ *Op. cit.* p. 22.

⁴² *Op. cit.* pp 61—62.

⁴³ *Op. cit.* p. 64.

⁴⁴ Cf. *Friedmann*, W., *Law in a Changing Society*. London, 1959, p. 286.

cally obvious fact that *the individual is socially conditioned*. (It should be noted that in classical bourgeois individualist sociology this fact had been thrust to the background.) In addition, this dependence on social conditions signifies group conditioning of several strata and qualities. David Riesman, a prominent figure in modern American sociology, calls this process reevaluated individualism, whose essential characteristic is exactly the recognition of "group-conditionedness".⁴⁵ *Inter parentheses*: it is no mere chance that just in these days the group concept has become a central category of sociology.⁴⁶

When the problem is surveyed from the perspective of sociology, it is beyond doubt that group-conditionedness of the individual was a fact even in the bourgeois society of classical capitalism. If so, what is the cause of this ideological change, which manifests itself also in the sphere of law? Obviously group allegiances (including organizational allegiances) had to come vigorously to the fore just in the fields primarily affected by *society's economic structure*. Such are the associations in the field of production, marketing, and labour. The birth of monopolistic organizations on the one, and the organizational consolidation of the labour movement, and the role of the trade unions gaining in importance, on the other part, revealed allegiances which could not be bridged over by legal fictions. Georges Burdeau writes that although the legislator has stamped as irrelevant the actual sociological allegiances which determine the position of the individual in a wide range of groups, and the legal fictions so born have helped to preserve the ideology of individualism, this state is nevertheless far from reality.⁴⁷ (According to these fictions e.g. membership of a trade union is legally non-obligatory.) In modern democracy,⁴⁸ continues Burdeau, which is already adapted to an economically and

⁴⁵ In sociology this thesis has been developed in particular by David Riesman. Cf. *Selected Essays from the Individualism Reconsidered*, New York, 1954, pp 12–27.

⁴⁶ See Kulcsár, K., *Bevezetés a szociológia történetébe* (Introduction into the history of sociology). Budapest, 1966.

⁴⁷ Burdeau, G., *Les libertés publiques*. Paris, 1961, p. 173.

⁴⁸ *Op. cit.*, pp 177–178. A recognition of the turn-about expressing such sociological facts in the appraisal of the individual appeared in the sociology of law at a relatively early date. E.g. Roscoe Pound speaks of a turn from the abstract will of the, by the standards of natural law, abstract individual to the concrete desires and claims of a concrete individual. Appraising social legislation, he is looking for a relationship existing with the evolution of civic rights in this respect. He even refers to that the interests of the concrete worker, and even of the concrete employer may be safeguarded better with this conception than by a theoretically correct, however for practical purposes abstract concept of justice associated with an abstract picture of the individual. However, he points out that abstract individualism has become part and parcel of the world of ideas of American judicature, that the courts often are rigidly opposed to legislation conflicting with their ideas. (*Pound, R., Jurisprudence. Research in the Social Sciences.*, Ed. by Wilson Gee, New York, 1929, p. 191.) Socially concrete group-conditionedness of the individual on the plane of civil freedoms was else brought up as a political theoretical problem at the appraisal of the practice of the Supreme Court of the United States. Mark De Wolfe Howe in the introduction of a paper appraising the 1952 Term of the Supreme Court (*Political Theory and the Nature of Liberty*) points out that private groups within the community have a right to their own free life and that pluralist political theory understood in this sense (Gierke, Maitland, Figgis, Laski are men-

socially complex world, the role of the individual cannot anymore be understood without the mediating activities of the widest range of groups, and this fact has significance also from the point of view of human rights. The recognition of this sociological fact then operates on the conception of a general social conditionedness of personality. In the latest theories the problem of the "prevalence of personality" appears in an altogether different way. This problem is by the way much discussed in connection with the constitution of the German Federal Republic.

Pursuant to what has been set forth the consequences of a certain recognition of group-conditionedness in the field of civic rights have appeared in direct association with economic life. Of course, in this process also other factors were operating, such as were outside the sphere of capitalist society, e.g. the proletarian revolution, the birth and growth of the first socialist state. New rights, unknown in the period of capitalist society, based on free competition have sprung up and received statutory recognition more or less as civic rights. Summed up these rights have been designated as economic and social rights. However, the declaration of these rights, or even their guarantee in any way, be this the slightest claim to a guarantee, challenge the validity of some of the human and civic rights in the classical sense, or even their formal guarantee. Beyond this process necessarily associated with the growth and basic phenomena of monopoly-capitalistic social conditions: other phenomena and the influence of certain political forces become recognizable in the development of the actual condition of civic rights. These phenomena and forces are also related to the widest variety of political and other manifestations of monopolization, however, conditioned in a more differentiated manner. So also the nomenclature of the civic rights will undergo changes, both in their constitutional expression and their actual judicial or social practice.

5. ENTRY OF THE ECONOMIC AND SOCIAL RIGHTS ON THE SCENE IN THE BOURGEOIS COUNTRIES

It has already been made clear that the advent of monopolistic conditions brought about changes first of all in the sphere of the rights most closely related to economic life. In this connexion it would be worth while to review the historical development of one of the most typical classical civic freedoms, viz. that of the freedom of contracts. The more so because it was in the process of the metamorphosis of this concept (surrounded by a variety of legal institutions and rules of law) that the wide range of economic and social rights, since then universally recognized, appeared.

In the initial stages of bourgeois society the legal institution of contracts —

tioned in this connexion) is part and parcel of American constitutional doctrine. In the opinion of De Wolfe Howe, the most significant act of the 1952 Term was the decision of the court which recognized that the associations of men had freedoms independent of, and differing from, those of the members. (The Supreme Court, 1952, Harvard Law Review, 1954, No. 1, pp 91—92.)

conceived as a freedom — was invested with particular significance! As is known, Maine considered the freedom of contracts the legal landmark of contemporaneous bourgeois society, describing the evolution of law as “progress from status to contractus”. It calls for no explanation that in bourgeois society, based on the free, contractual putting up for sale of labour, freedom of contract had an exceptional significance. And even where this freedom was not generally and formally declared in the constitutions, yet in public opinion, and in judicial practice it was considered a freedom equivalent to the human and civic rights. This was the case in particular in Britain or the United States, these typical, highly developed capitalist countries. Imre Szabó referring to the statement made by Turgot that “the freedom of work is the first, most holy and most inalienable property of every man” aptly remarks that “this means nothing but the freedom of employment, the freedom of paid work, the freedom of the labour market: free disposal of property, sale, barter, freedom of production and trade, i.e. the freedom of the forms of capitalist production.”⁴⁹ It is evident — and here the conception of the physiocrats merely serves as an example — that these freedoms and rights being closely associated with economic conditions, will directly reflect the established economic order of society. Inversely, they will rely most strongly on the system of fundamental rights, or human and civic rights. Whenever fundamental changes take place in society, these changes will be first reflected in the system of freedoms closest to the economic order. Next, the changes will inevitably react on the entire system of human and civic rights.

The Anglo-Saxon system of law, with its peculiarities, lends itself readily for a study of this process. In the classical period of the capitalist system of economy the most significant characteristic of contract is its freedom from restrictions, i.e. almost unbounded freedom. The State by way of statutory provisions interfered on the rarest occasions only in the will of the parties in relation to the contract. (Of course, certain limitations were set by what were called factory laws, however, these limitations were fairly vague, nor were the rules interpreted too rigorously.) However, in the society of monopoly-capitalism soon it was found that the classical concept and function of the contract were untenable; so much so that Roscoe Pound, this prominent figure of American jurisprudence, could with right point out that the limitation of the freedom of contract was an outstanding trend in the modern evolution of law. As always, the change first took place outside the sphere of law. The formation of monopolistic organizations for practical purposes reduced to nought the freedom of contract, and it could be recorded as a strange fact that the State had to introduce measures restricting the freedom of contract exactly in the interest of the freedom of contract. A measure of this type was e.g. in the United States the Sherman Act, which declared unlawful any contract, combination, etc. which was directed against, or allowed of a construction amounting to a limitation of, the freedom of trade. (The Act was approved in 1890.)

⁴⁹ Szabó, I., *Az emberi jogok mai értelme* (Modern concept of human rights). Budapest, 1948, p. 35.

However, characteristically, from the beginning of the century judicial practice has interpreted the act for practical purposes so as to remove obstacles in the way of the formation of giant monopolistic combinations.

However, at the turn of the century the legal position taken in the United States was such as to declare contracting a right which had to be safeguarded against the interference of the State.⁵⁰ And in *Lochner vs New York* the Supreme Court of the United States held that the general law of the conclusion of contracts in connexion with occupation was part of the personal freedom protected by the Fourteenth Amendment to the Federal Constitution.⁵¹ It is significant that this decision was born at a time when the evolution of monopolistic conditions already imposed strong restrictions on the freedom of contract. Simultaneously in other cases, e.g. in the construction of the Sherman Act by the Supreme Court (for the time being in the form of minority opinion), the tendency appeared according to which in the intention of the legislator, the Sherman Act was meant to prohibit "unreasonable restrictions" only. Later on this became a majority opinion *in re* Standard Oil and Tobacco companies, in 1911. By this then the path was open to the widest construction of the act. However, in *Lochner vs New York* the Supreme Court by referring to the principle of the freedom of contract declared an act unconstitutional which decreed a ten-hour's day in certain branches of industry. I. e. in the present case the Supreme Court took recourse to the otherwise obsolescent institution of the freedom of contract *against* labour legislation. The Supreme Court took a stand against labour legislation even many years later. E.g. in *Adkins vs Children's Hospital* the Court of the District of Columbia with reference to the Fourteenth Amendment declared a statute on the maximum working time of women and children invalid.⁵² At the appraisal of these occurrences it ought perhaps to be borne in mind that the safeguard of old principles of law, in particular in problems of such a grave nature, may for a time determine the practice of the courts, even against actual reality. On the other hand, as regards legislation on labour the safeguard of the freedom of contract still coincided with the political interests which operated effectively in the practice of all courts, especially of such a conservative tribunal as was the Supreme Court of the United States in the twenties. Later on, when labour legislation was eventually introduced it was of necessity at the cost of the freedom of contracting or ignoring it altogether.

As the freedom of contracting appeared parallel with the liberal ideology rejecting state interference on the soil of classical capitalism, so the claims to, and practice of, the extension of the economic activities of the State, state interference, planning, supervision, etc. marked the progress of restrictions imposed on this freedom. This process was reflected also by court decisions. Justice O. W. Holmes, in 1907, dissenting, held that where an important basis of policy wanted restriction, or the

⁵⁰ See e.g. *Munn v. Illinois* (94. U.S. 113, 1876), where majority opinion definitively drew the sphere within which the State could interfere in the name of public interest, so that it took a stand against any other measure infringing the freedom of contract.

⁵¹ 194. U.S. 45, 43, 1905.

⁵² 261. U.S. 525, 1923.

need of such restriction was general belief, the Constitution did not prohibit such restriction on the ground whether or not the court agreed with it.⁵³ However, not quite two decades later Holmes formulated as majority opinion that any business could be restricted, even prohibited, when an adequate force of public opinion stood behind it.⁵⁴ At the time of the Roosevelt administration the almost unrestricted interference of the State in the law of contract (hitherto considered belonging in the sphere of freedom) appeared as the unanimous position taken by the majority opinions of the Supreme Court. The condition required by the court merely meant the approval by state or federal legislation of the theory by virtue whereof state interference took place.⁵⁵

Thereafter it was only proper to ask whether the freedom of contract still had any constitutional guarantees.⁵⁶

This revaluation of individual freedoms and individual civil liberties in opposition to state activity (in particular in the field of economy) is of course not a simple process, free of contradictions, even in bourgeois legal practice. So e.g. the Supreme Court of the United States, though only with five votes against four, held that the National Labor Relations Act was constitutional; although in a resolution of 1943 the court wanted to protect civic rights against "economic philosophy". Present-day bourgeois jurisprudence then makes attempts to resolve the contradiction between the rights of the individual and essential state planning, supervision, in general increasing state interference by a variety of makeshifts. These attempts in general try to reconcile traditional rights to the exigencies of the modern age, and substitute for the restriction of the rights the welfare and social service functions of the State as positive factors.⁵⁷

Of course, these references to American evolution in relation to the changes in contract law have been made by way of example only. On the whole the same process took place in the capitalist world throughout. E.g. in Britain, France, or Germany the rules of law had a far greater role, still the process, and the essence of its appraisal, which in a variety of forms always refer back to changes that had taken place in society, remain the same. Friedmann e.g. writes in this connexion as follows: "Four major factors may be regarded as being mainly responsible for a transformation in the function and substance of contract, which is creating a widening gap between legal reality and the traditional textbook approach. The first is the widespread process of concentration in industry and business, corresponding to an increasing urbanization and standardization of life. Its legal result is the "standard" contract . . .

"The second factor is the increasing substitution of collective for individual

⁵³ Dissenting in *Adair v. United States*, 208 U.S. 161, 1907.

⁵⁴ 273. U.S. 418, 446, 1926.

⁵⁵ 291. U.S. 502, 1934.

⁵⁶ *White*, Thomas Raeburn, *Constitutional Protection of Liberty of Contract: Does It Still Exist?* — *University of Pennsylvania Law Review*, 1935. No. 4.

⁵⁷ *Friedmann*, W., *Law in a Changing Society*, London 1959, p. 488 et seq.

bargaining . . . Its legal product is the collective contract between management and labour, with a varying degree of state interference.

"The third factor is the tremendous expansion of welfare and social service functions of the State . . . its legal product is twofold: on the one hand, it has led to a multitude of statutory terms of contract . . . on the other hand, it has led to a vast increase of contracts where government departments or other public authorities are on the one side, and a private party on the other. . . ." Lastly, the economic security aspect of contract, the elaboration of remedies for breach, is increasingly affected by the spread of such political, economic, and social upheavals, as war, revolution, or inflation. Its legal result is the doctrine of frustration of contract."⁵⁸

It has already been hinted at that as the change in the appraisal of the freedom of contract was the primary manifestation of the changes in society, so this change in appraisal was at the same time the receptacle of the new rights brought about by this change and adding to the range of civic rights. As a matter of fact the majority of the rights recently adopted as civic rights insisted on a reappraisal of the freedom of contract, while the formulation of these new rights and their implementation in practice produced the restriction of the freedom of contract as a consequence.

The general evolution of monopoly-capitalism directly affected the freedoms closely dependent on economy, but at the same time called to life the organized and politically momentous force of the class which today has an increasingly significant role in political life, and so also in legislation: it called to life the organized political and economic mass-movement of labour. In fact with the advent of monopoly-capitalism it was not merely the freedom of contract that was affected. Restrictions were imposed also on other freedoms often going as far as nationalization or the limitation of ownership rights. Undoubtedly the growth of technics starting from the individually active worker, through the mechanized production line, has reached a stage where workers of high technical, and even all-round training are required.⁵⁹ At this stage, objectively, the training of the worker, the maintenance of his physical fitness for production, will set limits to the full exploitation of his force, while certain claims are laid to his intellectual and physical state. However, parallel with the increased organization of industry and of the whole economic life, monopolization has necessarily called to life organized labour which has appeared as a significant force even where its revolutionary struggle has not achieved the stage of the proletarian revolution and the socialist

⁵⁸ Op. cit. pp 44—45. As a matter of course concept and function of contracts have undergone a change also in other legal systems. In continental jurisprudence the work of *Savatier*, R., *Les métamorphoses économiques et sociales du droit civil d'aujourd'hui*, Paris, 1948, deserves special attention. He traces back the change to two factors, viz. economic causes, and class solidarity as a new factor. The decline of individual freedom, and so also of the freedom of contract is the consequence of that not only man has conquered matter, but also matter has conquered man (op. cit. pp 12—15).

⁵⁹ See *Bauman*, Z., *Z zagadnień współczesnej socjologii amerykańskiej*. Warsaw, 1961

State. Organized labour movement, whose economic or political weight is undisputed now for many years, with a socialist state, and later on, the socialist camp in the background, has been instrumental in launching factory legislation and the practice of social legislation eventually resulted in the birth of economic and social civic rights. Eventually it became recognized that the formulation of a system of economic and social rights, as the lawful share of every citizen was necessary on the international plane.

What are these rights? In the nomenclature of Mirkine-Guetzévitch these are: Protection of the family and children, equality of the sexes, social security, right to learning, right to work, trade union law, right to healthy life, to holidays, economic guarantees of the working class, certain limitations of ownership.⁶⁰

The history of this manifestation of rights incorporated in the system of economic and social rights dates back to a relatively early time. Imre Szabó mentions that there are traces of the declaration of rights of this content at the time of the French Constitution of 1793. Article 24 of the declaration preceding the Constitution, presumably from the pens of Condorcet and Robespierre, states that "public relief is a holy duty. Society has to support unlucky citizens either by giving them work, or by providing the vital conditions for those incapable of work". Moreover this declaration refers also to certain social guarantees and compulsory schooling.⁶¹ After the February Revolution of 1848 the provisional government declared the right to work, however, this right was not taken up in the Constitution of 1848, although in the first committee draft the right to work and to state support was still included. Thereafter for a long time nothing was said of the constitutional formulation or declaration of such or similar rights coming within the category of social and economic rights. In any case it is characteristic that a declaration of these fights came to the fore at times when, owing to profound social conflicts, the force and influence of labour were particularly strong. Essentially this force and influence produced the experiment of 1848, such tendencies manifested themselves in the post-revolutionary Mexican constitution of 1917, and in the Spanish constitution of 1931. That the prominence given to these rights was associated with the revolutionary conditions or the force and influence exercised by labour under revolutionary conditions, was best confirmed by the Weimar Constitution of Germany. As is known, this constitution was promulgated after the suppression of the revolutionary struggle of the German working classes, yet it attempted some sort of a declaration of these rights, after the First World War.

The Second Part of the Weimar Constitution, which extensively summarizes the fundamental rights and duties of the Germans, attempts to reconcile the contradictions between the fundamental rights of formal political democracy and "social" democracy partly by splitting up the relevant articles of the Constitution into five sections, viz. the Individual Person, Community Life, Religion and Reli-

⁶⁰ *Mirkine-Guetzévitch*, *Les constitutions de l'Europe nouvelle*, 1928, p. 37.

⁶¹ *Szabó, I.*, *Az emberi jogok mai értelme* (Modern concept of human rights). Budapest, 1948, p. 73.

gious Associations, Education and School, Economic Life, and in this way to merge the whole set of problems in the conglomeration of detailed provisions on the basic order and organization of Society and State. Secondly, beyond the conventional catalogue of civic rights the Constitution established general principles with reference to future legislation. These for practical purposes non-binding declarations [such as e.g. that State and Constitution specially safeguard the interests of matrimony and maternity (Article 119), protect youth against exploitation and moral, intellectual or corporeal corruption (Article 122)] melted into thin air in the social reality of the subsequent period of Weimar Republic. Similarly, the introductory article of the section dealing with economic life also expresses but generalities. "In conformity with the principles of justice, the order of economic life shall meet the purpose of guaranteeing a livelihood worthy of man to everybody. Within these limitations economic freedom of the individual shall be guaranteed" (Article 151). This article is by itself contradictory, for it is evident that the first provision of the article cannot be translated into reality unless the limitations of the second provision *ab ovo* admit the exclusion of the economic freedom of the individual, freedom of economic activity in the capitalist sense of the term, i.e. capitalist society itself. And Article 165 inviting workers and employees to cooperate with the capitalists on an equal footing at the establishment of wages, salaries, and conditions of work, is again but a formal provision contradicted by the economic order of society. These provisions were unable to bring about any changes in the actual economic and social order of the Weimar Republic and, essentially, were never enforced. They merely served to prove that only by way of rules of law, be these formulated as cautiously as possible under the circumstances, the effects of facts forthcoming from the fundamental structure of society cannot be neutralized.

Beyond the social forces already referred to the subsequent process of recognition of the economic and social rights was effectively influenced by the success of the October Revolution, and the birth of the socialist state of the Soviet Union. The effects of this fact initially manifested themselves in concessions to which the other states were forced with regard to "the social threat and destructive results of the Russian experience" as put by Mirkine-Guetzévitch. Later, however, also the claims arising from the ideology of the changing capitalist state progressively came into prominence. Still, the actual enforcement of these claims was restricted by a number of social factors. However, the effect of the economic and social rights declared in the Soviet Constitution of 1936, this new concept of human rights, made itself felt with increased vigour only during the Second World War. By the end of the War, partly as a result of work done by the various international organizations, partly as the outcome of the War, the political force and influence of the working class, in first order the communist parties, had its proper effects. In a number of newborn constitutions a wide range of human and civic rights were taken up, which also included economic and social rights in contrast to earlier formulation. This trend was particularly marked in two countries where immediately after the War the communist parties had a significant role in political life, viz. in France and Italy.

As is known, the first French draft constitution after the War was rejected by a plebiscite by a slight majority only, on the 5th May, 1946. According to certain bourgeois writers the principal reason of the rejection of the draft was that it incorporated too wide a range of human and civic rights. The social and economic rights defined in the second part of the Declaration, wrote e.g. Frede Castberg, bore the stamp of an ideology which bourgeois circles considered socialist.⁶² The finally approved wording of the constitution omits the declaration of the fundamental rights, and summarizes the relevant principles in the Preamble. As the rapporteur of the constitution in the National Assembly pointed out, this Preamble partly confirmed the fundamental principles declared in 1789, partly purposed the political, economic and social advancement of the State on the path to a democratic republic. Among others the principles relating to economic and social rights were meant to indicate the step forward. The content of this step was formulated by Duverger as follows: "The essence of economic and social rights is that every citizen should be guaranteed the material conditions enabling him to exercise his other rights."⁶³ The penetration of this idea into the bourgeois conception of civic rights was in fact of great importance, and followed from the tendencies, economic and political practice which, in particular after the Second World War, found their expression in the idea of the welfare state. However, the constitutional definition of the fundamental principle formulated by Duverger was fairly different in the several constitutions. E.g. the French constitution of the 27th October, 1946 not only stated that everybody had the right and duty to work, of course within statutory limitations, but also that labour through its representatives would take part in the collective formulation of the conditions of work. The nation, said the Constitution, equally guaranteed to individuals and families the conditions for their development, and guaranteed to everybody, in particular to children, mother, and the aged, the safeguard of their health, material security, the right to rest and paid holidays. The Constitution of the Italian Republic of the 27th December, 1947 recognized as the inviolable right of the individual the social formations in which the individual exercised his personality. Accordingly, the Constitution enumerates the rights and duties of the citizens in four sections. Section 1 deals with civic relations, Section 2 with ethical-social relations, Section 3 with the economic relations, and Section 4 with the political relations. Within this framework the Constitution states that the Republic safeguards the interests of labour, and in conformity with Article 4 declares that the worker is entitled to wages corresponding to the quality and quantity of his work, which should be sufficient for a decent livelihood of his family and himself. In Article 4 the Republic recognizes the right of every citizen to work, and promises to bring about conditions for the implementation of this right. In the Italian constitution too, the freedom of the trade unions and the right to strike (within

⁶² Castberg, F., *Freedom of Speech in the West*. Oslo—New York, 1960, p. 27.

⁶³ Duverger, M., *Droit constitutionnel et institutions politiques*, 2nd ed., Paris, 1956, p. 209.

statutory limitations) have been declared. It also recognizes cooperatives based on mutual aid, the possibility to restrict private economy, etc.

However, the implementation of the rights guaranteed by these and other constitutions does not merely depend on the subjective will of governmental practice. Always the actual economic and social conditions will define how much will be actually realized from the wording of the constitutions. Legal interpretation merely comes second.

However, before embarking upon a discussion of the problem on general lines it would be worth while to analyse a constitution from this aspect. Owing to the peculiar character of the social conditions reflected and the political movement expressed by it, the constitution in question has brought into prominence the problem of the implementation of rights of a nature outlined above.

It is, namely, very interesting to observe how human and civic rights take shape — particularly in their relation to economic and social rights — in countries which are liberated from colonialism. In addition to nationalistic tendencies such countries also show certain socialistic tendencies, and make attempts to introduce some sort of planned economy adapted to their circumstances and build up the welfare state in accordance with their own ideas of socialism. *The constitution of India* is characteristic of these tendencies and their statutory reflection. The Indian movement of independence, the ideology of Indian nationalism has contained a certain social programme from the very outset. The process of liberation, in which the toiling masses were extremely active, has brought to light social problems, and this was obvious to an extent where they manifested themselves even in the programme of Congress demanding radical changes and a state of an entirely novel structure.⁶⁴ As the famous commentator of the Indian Constitution, Durga Das Basu, writes, this “new type” state was meant to become a welfare state and not only a policy state.⁶⁵

What does this claim mean in the Indian Constitution, or more closely, in the system of civic rights? First of all, in the Preamble the Indian Constitution of the 26th November, 1949 solemnly declares that the purpose of the Indian democratic republic is to guarantee for all its subjects social, economic, and political justice, the freedom of thought, creed and religion, equal status and chances. After laying down the guarantees of equality and freedom following from the given circumstances, the Constitution restricts property more than conventional bourgeois provisions do, and indicates the methods and limitations of nationalization and expropriation of property for public purposes, even if only temporarily (Articles 30 and 31). However, it does not go any further in the chapter dealing with fundamental rights. On the other hand, in Part IV the Constitution defines the guiding principles of governmental policy, and to be precise, principles which even with their extremely cautious wording point beyond the given social

⁶⁴ Cf. Kulcsár, K., Az alkotmányértelmezés jelentősége és problémái Indiában (Significance and problems of the interpretation of the constitution in India). Jogtudományi Közlöny, 1960, Nos 7—8, p. 439.

⁶⁵ Durga Das Basu, Shorter Constitution of India, 2nd ed., Calcutta, 1959, p. 158.

structure of the country. Consequently, it is not by mere chance that a proviso has been taken up in Article 37 of the Constitution declaring that no right or claim enforceable at law may be based on these principles, whereas it is the duty of the State to apply these principles in its legislation.

In the following some of these principles, mostly in the sphere of social and economic rights, will be summed up. *Article 38*: The State shall endeavour to promote the welfare of the people by ensuring and safeguarding a social order as effectively as possible, where social, economic and political justice permeates all institutions of the nation's life. *Article 39*: The State shall direct its policy so as to guarantee that (a) the subjects, men and women, equally have a right to the means necessary for their subsistence; (b) the ownership and control of the material resources of the community should be distributed in the best possible way to promote the commonweal; (c) the operation of the economic system should not bring about a concentration of property and the means of production, detrimental to the interests of the community; (d) men and women shall be paid equal wages for equal work; (e) health and physical force of the workers, men and women, further of children of tender age shall not be exploited, and the subjects shall not be forced by economic need to undertake work not suiting their age or bodily strength; (f) children and youth should be protected against exploitation or moral and material destitution. *Article 41*: With its economic faculties and within the limitations of its growth the State shall introduce effective statutory regulation for the right to work, education, insurance against unemployment, old age, health and disability, further to support from public means in case of undeserved need. *Article 42*: The State shall introduce legislation to ensure just and humane conditions of work and maternity aid. *Article 43*: The State shall endeavour, by way of proper legislation, economic organization, or any other method, to guarantee work, wages and conditions of work for each agricultural, industrial or other worker, which ensure a decent standard of living, the undisturbed enjoyment of leisure, social and cultural development . . . *Article 47*: The State shall hold it a primary duty to improve the standards of nutrition and living, further the health of the people, etc.

This expedient, which is by no means without an example in the history of constitutional law provides an opportunity for a restrictive interpretation of the political tendencies of the State conforming to the guiding principles, despite all good intentions. The expedient itself necessarily follows from the conditions of Indian society and economy where it would have been unrealistic to declare the considerations embodied in the guiding principles as civic rights. In India too the institution of a constitutional court is known, however, in the opinion of the above quoted Indian constitutional lawyer the courts cannot declare legislation invalid which conflicts with the guiding principles, still in accordance with the Irish decisions⁶⁶ they have to take into account the tendencies embodied in the

⁶⁶ Reference to the Irish decisions is explained by that the Indian Constitution was drafted on the pattern of several existing constitutions, so on that of the Irish, and that in accordance with the practice of the Common Law courts, in relation to a particular article the interpretation of the local court of the model constitution was also normative.

principles. Thus, the guiding principles are not binding, and may become so only by way of subsequent legislation.⁶⁷ It is obvious from this statement that the laws cannot be interpreted with the help of the principles, and what is more: Part IV of the Constitution incorporating the principles *recedes into the background* in respect of other provisions of the Constitution, and in particular in respect of Part III including the fundamental rights. Whatever the nature of a conflict arising between Parts III and IV, the Court will have to decide in favour of Part III.⁶⁸ Consequently, the conclusion of Basu is not unjustified, i.e. that the normative significance of the guiding principles is for practical purposes only a moral one.⁶⁹

Only a thorough exploratory work, going deep into the details of the discussions and debates in connexion with the drafting of the Constitution could explain the reasons why the social and economic rights as detailed above, and elsewhere in many respects recognized as civic rights, have not been taken up in the Indian Constitution as civic rights, but merely as the guiding principles of state policy. However, we daresay, a closer study of the bourgeois constitutions introduced after the Second World War (and in particular, of their implementation), would show that the principles laid down and declared in them as rights in general have a moral significance only, and that their enforcement depends on the sociological reality of society as a whole.

We think we are right to discover in obvious formal changes traceable in the Indian Constitution *a change of conception actually taken place in the evolution of civic rights*, i.e. a change that has brought *the state into prominence as against the citizen* in the sphere of the civic rights. In the Indian Constitution (for the time being only in part) the state declares something as the *platform of its own future activities* as opposed to the classical declarations of *rights of the citizens* and their claims against the state based on them. Here the *fiction is rejected according to which the citizens can demand from the state a declaration of these rights as their own* before a forum. The backwardness of the social-economic conditions in India, further the peculiar character of the movement of liberation eventually resulting in the formation of a state, enabled to recognize this general evolution on a constitutional level. (Notwithstanding that through numerous channels Western political and legal institutions penetrated into the Constitution.) Since social reality, even in a welfare state, will not permit the complete (or often even incomplete) enforcement of the economic and social rights, this sociological situation influenced by considerations of expediency will thrust them back to the plane of moral normatives, or will leave them intact as ideological claims at most.

And to illustrate the extensive validity of what has been set forth on the example of the Indian Constitution, the following words of Burdeau may be quoted: "Briefly, the economic rights are not privileges anymore in the service of the indi-

⁶⁷ *Durga Das Basu*, *Commentary on the Constitution of India*, Vol. I, 3rd ed., Calcutta, 1959, pp 394–395.

⁶⁸ *Op. cit.* pp 70–71.

⁶⁹ *Op. cit.* p. 392.

viduals, but means which . . . promote the creation of a certain type of order in legal, economic and social life".⁷⁰ This conception already turns the limelight on the purposes of the state, — even on the plane of civic rights — as opposed to the former position when stress was laid on the rights of the individuals.

In fact the statement made by Michal Staszków speaking of the economic and social rights must be fully endorsed. According to him their past is not long, nor glorious, often they have appeared on paper only, and not a few of them have but a "didactic" value, for in practice they were little implemented.⁷¹ Often even the *legal character* of these rights is called into doubt, in particular in connexion with constitutions which originally were born from a compromise of conflicting political forces. In the opinion of Staszków a constitution of this type is the Italian, in whose drafting also left-wing forces were instrumental to a large extent. Later the political situation in Italy underwent an appreciable change. Normally in such cases a legislation going beyond the constitution and translating the provisions of the constitution into legal reality in their details, would ensue. However, a legislation of this type was scarcely introduced in Italy after the approval of the constitution. As Staszków states, this legislative reality was responsible for the point of view of the overwhelming majority of scientific dissertations dealing with this problem, professing that the articles of the constitution proclaiming the economic and social rights were void of legal value. The theory was then launched that the critical articles of the constitution had but the character of a governmental programme, and this theory was not without effect on the application of the law. Court decisions were forthcoming which in connexion with Articles 32 or 34 containing provisions on the safeguards of hygiene and the minimum subsistence level, respectively, declared that these articles were but part of the government programme. And the Tribunal of Rome held that the court could not ignore the disputes attaching to the legal character of these provisions. Finally it was concluded that the article of the constitution on a minimum subsistence level *had no binding* force. Notwithstanding the constitutional proclamation of the right to strike several judicial decisions were born which curbed this right. Although in point of fact the constitutional court set up in 1956 took a stand against the concept of programmatic rules⁷² and held that each provision of the constitution had a legal value, still this recognition of the legal force of these provisions seems by itself insufficient, for it did not guarantee their conversion to social practice, i.e. their becoming reality. Nothing less than this would mean the actual enforcement of the rule of law. However, the given social reality did not allow that these rules be given a higher estimation than a mere government programme.

Although social legislation (at least in certain countries, and in certain spheres) has advanced a long way, e.g. in the United Kingdom or the Scandinavian

⁷⁰ Burdeau, G., *Les libertés publiques*. Paris, 1961, pp 337—338.

⁷¹ Staszków, M., *Quelques remarques sur les «droits économiques et sociaux»*. Essais sur les droits de l'homme en Europe. (Deuxième série). Torino, 1961, p. 47.

⁷² Staszków analyses the relevant Italian legal practice, *op. cit.* pp 49—52.

countries, as regards legislative measures or the practical application of the law, still there are no symptoms in the capitalist countries which would indicate the translation of the economic and social rights into universal and actual social practice. Staszków even underlines that the guarantee of the traditional rights and freedoms does not go beyond the conventional legislative activities of the State, essentially within the theoretical framework of Liberalism. However, today this is inadequate for the guarantee of a wider range of these rights. The guarantee of social and economic rights requires an increased activity on the part of the State, an activity accompanied by more effective interference in, and the actual control of, economic life. Anyhow only a policy of this type, i.e. a policy of a truly equal share in the life of society, would guarantee the exercise of the traditional, so-called liberal rights.⁷³ This process, i.e. the fullness of state interference in economic and social life, has not only got under way, but advances with great vigour. The creation of a large number of supranational economic organizations has also necessarily brought about a certain degree of equalization in State policy. It is possible that as regards the guarantee of economic and social rights this equalization may confront certain countries with problems, or bring about a recession. If e.g. the United Kingdom joined the Common Market in all events changes would take place in full employment, or in the sphere of nationalized industry. However, some sort of a readjustment may reasonably be expected even in this respect.

The ideological stand against increased state interference is about to disappear. Liberal traditions have scarcely a role in political life, and reality has transformed these traditions more or less. At the end of the 19th century Herbert Spencer in his work *Man versus State* found the tendencies manifesting themselves in the then British legislation, where by the side of the factory laws also certain social trends became apparent, too much. In a highly passionate tone he drew the conclusion from these symptoms that Liberalism had lost its original purity. Liberalism, in opposition to Toryism, emphasized political individualism against State power, and was attached to a social order governed by the institution of contract and advocating a free scope for the activities of the individual. Spencer, in 1884, believed that Liberalism was turning into new Toryism, whose outcome would be new slavery.⁷⁴ The anxieties of Spencer cause no unrest in British public opinion of today, and an outstanding personality of British forensic literature W. Friedmann, was able to write in conformity with reality that "Conservatives and Liberals, Democrats and Republicans, Socialists and individualists, all hold the State responsible for ensuring conditions of stable and full employment through public works and relief schemes, tax policies and other instruments of public policy; it is expected by the community to provide minimum standards of living, housing, labour conditions and social insurance. While there is controversy on the degree of public controls and the socialization of industries and

⁷³ Op. cit. pp 52 – 53.

⁷⁴ *Spencer*, Herbert, *Man versus State*, London, 1940, p. 20.

public utilities, some degree of public operation or control of business is recognized by all major parties as necessary, and practised in all modern States.”⁷⁵ The dual starting assumption of Friedmann, i.e. that the law is a flexible tool of the social order, and that the free and responsible individual is still the basic asset of Western society,⁷⁶ renders bourgeois reality with certain contradictions and illusions. The appearance of the ideology of the welfare state also indicates that, with the changes which have been demonstrated throughout the present discussions, (i.e. with the metamorphosis of the capitalist economic order) the basic asset of the society of “laissez faire” has been relegated into the background. This asset, the individual, acting freely on his own initiative, may perhaps be best expressed by “mind your own business”. Simultaneously, with this development, society is coming into prominence in certain spheres of legislation, as an asset progressively growing in significance. This is not always recognized by bourgeois ideology. It is significant that when e.g. Friedmann admits that the position of the individual in present-day society is defined less and less by contract, and increasingly by his status (in fact the individual is bound by collective bargaining suiting his status) he asserts that this definition of the position of the individual by the status serves the welfare and the increased unfolding of the individuality of the person.⁷⁷ Even if there is a core of truth in this statement, it cannot be denied that this situation is incident to the progressively expanding activity of the State in legislation and administration. Characteristically, e.g. Friedmann himself attributes a very great importance to the increasing role of state administration, and administrative law. However, it follows from the nature of things that with its expansion state activity will penetrate into the life of the individual in more and more respects, and will more and more reduce the *absolute* ideological significance of the individual as an asset, even when state activity may imply some sort of improved chances of the individual. I.e. this phenomenon actually operates towards a certain restriction of the *traditional* rights of the individual even when this restrictive trend is not expressed by rules of law, or even when the various constitutions in general declare the traditional human and civic rights. As a matter of fact, the actual functions of governmental organs, necessarily changed in approach and appraisal of the problem, are less suitable for the actual appreciation of these rights. So gradually the guarantees are more and more coming into prominence, and are at the same time becoming problematic. In fact their significance lies not merely in that under certain circumstances they may actually be adequate for the safeguard of the traditional rights of the individual. The fact is that the guarantees with their mere existence, even if this is an abstract existence in the form of a rule of law, are capable of influencing governmental practice to a certain extent.

The metamorphosis of bourgeois society, the appearance of new monopolies have thus led to the birth of new organizations, which for themselves and so also

⁷⁵ Friedmann, W., op. cit., p. 5.

⁷⁶ Op. cit., p. XIII.

⁷⁷ Op. cit. p. 88 et seq.

for the mass of citizens have formulated new rights and duties, and had them recognized by the state. On the other hand, and parallel with overall evolution, the sociological reality has influenced governmental activity so that the latter was forced — both in theory, and more or less in practice — to appreciably extend the traditional range of rights and recognize them as civic rights. This overall evolution, on the whole in conformity with reality, was followed by a change of the individualist approach and ideology in general, and also in the related political or sociological concepts. A new construction of civic rights has appeared, according to which these are *not the rights of the individuals but the reflection of governmental endeavour directed to some sort of social order*. Undoubtedly, there is a good deal of reality in this conception.

However, the economic and social rights, by their very appearance on the scene, have influenced traditional civic rights in two directions. Partly, the appearance of these rights has from the start led to limitations. This is wholly understandable, for such a policy cannot be carried into effect, even in the narrowest sense of the term, unless by a limitation of individual rights. Secondly, the new conception appearing simultaneously with the economic and social rights, partly stressing their programmatic significance (as opposed to their legal character), partly placing state activity in the focal point, will react on the traditional appraisal of these rights, and will inevitably weaken their actual legal force.

6. POLITICAL FACTORS IN THE EVOLUTION OF CIVIC RIGHTS

All that has been set forth above has not been intended to create the impression as if the recent changes observed in the sphere of the traditional (mostly political) civic rights were associated exclusively with the process of safeguarding the new economic and social rights, and that their limited progress were merely due to their re-appraisal. A representation of this sort would be biased also because any implementation of economic and social rights helps the majority of mankind to the actual exercise of certain rights pertaining to the traditional sphere of civic rights. Besides the necessary limitations and the restrictive approach following from the process described above, also tendencies of a *political character* assert themselves in certain countries, which curb the enforcement of traditional civic rights.

Of course, it should not be ignored that, in the last resort, these political considerations can be traced back to fundamental social conditions, and are conditioned also by secondary social factors.

The presence of political considerations in this sphere is today so obvious also for some of the bourgeois jurists that they cannot evade an appraisal of these factors. E.g. Friedmann reaches conclusions almost belonging to the theory of law, when he divides law into “political” and “juristic” law. In his trend of thought the legislative or judicial responses to social changes and the varying trends of public opinion are to a great extent influenced by the wars, or other great crises of national dimensions. The great economic slump of the thirties,

or the Second World War, or the political tension following it, in addition to measures affecting the economic (mainly the property and contractual) relations associated with these events, brought about measures directly restricting personal freedom. When the crisis passed away the sober and democratic approach of the problem had again the upperhand, — said Friedmann — and immediately the legal consequences followed in the wake of relaxation. So in the United Kingdom at the end of the War the special powers of the executive were repealed and Habeas Corpus was restored. In the United States, with the passing of the “real or imagined” communist menace, since 1955, the Supreme Court with a whole set of judgements restored the rights of the individuals and curtailed the jurisdiction of congressional committees of investigation, almost performing judicial functions. However — Friedmann continues — the fact that, in the democracies of the Western world, the restoration of personal liberties has on the whole gone much farther than the restoration of economic privileges is, in itself, a sign of a more deep-seated change in the structure of modern industrial society which makes a return to the era of more or less uninhabited economic freedom of movement socially unacceptable.⁷⁸

A criticism of Friedmann's construction, segregating juristic and political law would be outside the scope of this paper.⁷⁹ However, it is characteristic that in his opinion a curtailment of the political rights of the individual are temporary only. If, however, and undoubtedly this is the case, the evolution of the political rights of the individual is actually associated with politics even beyond the fundamental social-economic processes, then by politics *not merely the superficial phenomena of politics* should be understood, but efforts should be made to explore the universal and inevitable tendencies manifesting themselves in the policy of the given state, or rather given social order, more or less independently of the given situation, and to analyse the evolution of political rights in association with these tendencies. It is beyond doubt that in these days, or more precisely, after the Second World War, the birth of the socialist camp, its achievements, the fact of the coexistence of two social orders, have in many respects *intensified the internal political tensions* following from the contradictions of capitalist society. This phenomenon has become noticeable in particular in the United States, which since the War has occupied a leading position in capitalist society, so that her politics have gained sharper outlines in every respect. If therefore the thesis is accepted, that the evolution of the traditional civic rights is associated with politics, then in first order the *fundamental political conditions* defining the situations of a given polity *in its entirety* should be made the starting point. These conditions in the last resort follow from the type of society, however, it is by no means certain that all changes which have taken place in respect of each civic right can be traced back straight to the direct given peculiarities of the fundamental social relations. The situation of the traditional (in first order

⁷⁸ Op. cit. pp 13—14.

⁷⁹ Cf. Kulcsár, K., A változó társadalom és a változó jog (Changing society and changing law). Jogtudományi Közlöny, 1963, No. 1, p. 37 et seq.

political) civic rights in present day capitalist society suggests that the sociologically defined political factors influencing the evolution and enforcement of these rights should be differentiated on three levels at least.

1. The level of politics associated with the changes in the fundamental social relations, with the formation of monopoly-capitalist social conditions; notwithstanding the expansion of the range of civic rights here the system of the traditional political rights has partly been affected in the negative sense, in the direction of relativization.

2. On the level of political relations following from the given conditions of society, the social-economic system and its contradictions.

3. The political peculiarities within a definite state following from class and power relations.

Above we have already hinted at the power position of the United States after the Second World War. This position was in fact characterized by that the United States had become the strongest capitalist power in the world, and this meant for her the primordial task, in the situation following in the wake of the War, when the economic weight and political influence of the socialist countries strengthened considerably, to base her politics on the economic, political and military control of the capitalist countries. In the political minds of the United States this political situation evoked the problem of *security*, in about the form whether the security of the state could be reconciled to the traditional civic rights and freedoms at a time of expanding Communism. The problem became particularly acute in the first half of the 'fifties when President Truman initiated and introduced a variety of security acts and regulations, or when simultaneously with this hysteria the Commission for the Investigation of Anti-American Activities was perhaps most active. Of these acts and regulations in particular the Internal Security Act of 1950, and the Immigration and Nationality Act of 1952 were somewhat unusual. Both acts were significant particularly because they made a breach in several fundamental principles of the Constitution in a statutory form. So they infringed the principle of equality of the citizens, the freedom of opinion and of the press, the right to just procedure, etc.

Both acts were born during the office term of President Harry S. Truman, and in a situation where in the opinion of President Truman the United States accepted special responsibilities which in these critical times were associated with the leading role of the United States, when throughout the world free men put up strong resistance against communist efforts for world domination, when freedom was jeopardized by subterranean activities.⁸⁰ Truman, in his reminiscences published many years afterwards, explained this special security legislation with the growing strength of the Soviet Union and the spread of Communism. However, it is characteristic that here he appeared as defender of the traditional freedoms so that he himself condemned the Subversive Activities Control Act which though

⁸⁰ Cf. Security and Civil Liberties, Columbia Law Review, Vol. 51, No. 5, p. 46.

tabled at his initiative, was vetoed by him, after it had passed Congress. In his opinion the Act vested excessive power and authority in government officials, who could prevent the citizens from making use of their freedom of speech, so that a great stride was made by way of this act towards totalitarianism. In his opinion the act had unfavourable repercussions. E.g. the communists were forced to underground activities, so that it became difficult to keep an eye on them. Also with the formation of the great variety of congressional committees an atmosphere of fear began to develop so that even government officials in key positions lost their head.⁸¹

It is interesting to note that the same President Truman who during his term with his initiative contributed to the hysterical atmosphere of the legislation against subversive activities, the loyalty oath, etc., was in 1956 forced to stamp this atmosphere with this epithet. It is beyond doubt that although the political factors, which at that time determined the power position of the United States and the inland political effects resulting from this position, have not changed in general, and recourse is still taken to this legislation and the methods introduced by it, so also to Congressional committees, the actual situation cannot be identified with that existing in 1950, not even in respect of civic rights. This is also an indication of that within the basic trend (which as has already been pointed out operates towards a change, and often even towards a relativization of civic rights), certain secondary factors are active. The latter may still express essential elements of this process. These factors find expression even in the subjective arguments appraising the objective situation.

The sociologically conditioned effect of the political factors referred to above in the practice of the traditional civic rights can be well observed in the United States in connexion with the political movement associated with the name of Senator McCarthy.

American political science and sociology have already made attempts to explore the social relations and implications of McCarthyism. Factors have come to light such as the tension between the changes in the power position and internal structure of the United States,⁸² the relations between the petty bourgeoisie and McCarthyism,⁸³ which is important mainly because the attitude of these layers of society to the human and civic rights often manifests itself in a negative sense, as has been shown by investigations carried through in the United States,⁸⁴ and so on. These inquiries and studies all show that in the historic process of the

⁸¹ The Memoirs of Harry S. Truman, Vol. 2, New York, 1956, pp 289–300.

⁸² *Parsons, T.*, McCarthyism and American Social Tension: A Sociologist's View. — *The Yale Review* 1955 (Winter), pp 234–245.

⁸³ *Lipset, S. M.*, Political Man. The Social Bases of Politics. New York, 1960, p. 167 et seq., or *Trow, M. A.*, Small Businessmen. Political Tolerance and Support for McCarthy. — *American Journal of Sociology*, 1958, pp 277–278.

⁸⁴ See *Lipset, S. M.*, Some Social Requisites of Democracy. — *American Political Science Review*, 1959, March, pp 69–105.; *Stouffer, S. A.*, Communism, Conformity and Civil Liberties, New York, 1955, p. 32; *Selvin, C. H.*, — *Hangstrom, W. O.*, Determinants of Support for Civil Liberties, *The British Journal of Sociology*, 1960, No. 1, p. 51.

evolution of civic rights often political phenomena limited in time and space are active, which at the same time are expressive of specific relations and tensions within society, and which are apt effectively to influence the implementation of civil rights. In these days a political phenomenon expressing such social factors is e.g. the movement of American Negroes for the guarantee of their civil rights.

Within the limitations of this paper the attempted analysis of the factors instrumental in the evolution of civic rights was bound to remain imperfect. The considerations summed up in four points in the introduction have been illustrated by examples rather than demonstrated in any systematic form. Consequently, these theses will merely indicate the necessity and the usefulness of studies of this nature. The morale of the experiences gained through these studies may perhaps serve as a guidance in an analysis of the evolution of civic rights in Hungarian socialist society. As a matter of fact, in these investigations the phenomena of socialist societies, and so of Hungarian popular democratic society, have been ignored, and so has been the evolution of civic rights in socialist democracies. Consequently, gaps have been left in the historical picture. However, the acceptance of this risk has suggested itself as expedient. As a matter of fact the phenomena of bourgeois society may be reviewed from certain historical perspectives, even when these phenomena are events of the recent past. In fact here the students may rely with confidence on research work already completed or on universally known facts. On the other hand, within the given framework it is out of the question to carry out studies penetrating into the depth of the problems of socialist society with the desired exhaustiveness and thoroughness. However, in this respect the conclusion may be drawn that the change of the position of the individual in socialist society, the functional metamorphosis of government activity have had and continue to have analogous effects on the evolution of civic rights, so that the significance of the social factors has become even more marked. It would hardly be possible without such a study of the problem to appreciate with the proper accuracy the contradiction which existed between the system of civic rights widely guaranteed by the socialist constitutions and the practice developed during the years of personality cult. Here a combined phenomenon of the social factors manifesting themselves on a number of levels and of the political effects of government activity presents itself which can be understood only through investigations segregating the particular factors, and yet demonstrating the intrinsic relationship looming in the background. This is the only way to understand the said phenomena and to draw the proper conclusions therefrom, for future times.

CIVIC EQUALITY AND EQUALITY BEFORE THE LAW

1. ON THE NOTION OF CIVIC EQUALITY AND OF EQUALITY BEFORE THE LAW

The evolution of equality, as a social-political notion, is closely associated with the growth of the social community, and within this, the development of the mutual relations of the members of society. Consequently, the idea of equality spreads over the most heterogeneous spheres, and at the same time, in each historical period of social evolution, different postulations of equality will come into prominence (claims to religious, political, legal, sex, national and racial, social, economic equality). Accordingly, the notion, content, and social significance of equality are subject to continuous variations. The manifestation of the idea of equality in the general political-social sense is the product of the bourgeois revolutions. Engels, speaking of civic equality writes that equality is "a product of history for whose creation certain historical circumstances were needed, which themselves had a long historical process as their precondition".¹

Socialist science interprets civic equality as a result of the historical evolution of society, i.e. as a relative notion which is subject to development, and whose content is determined by the economic system, the stage of the society's material and intellectual development, and the respective position and mutual relations of the classes of society. The notion of equality is becoming relative, writes Imre Szabó. Equality was different in the age of the French Revolution, as it is different today in the states of different types. Whereas in certain countries equality means something existent, in others it is but a slogan of social progress.² Eventually the factual content of civic equality and the creation of the variety of safeguards for its enforcement are organically attached to the character of the state and society, and to the stage of economic and cultural development.

Socialist equality of the citizens of a state is a basic condition of the socialist governmental and social system. Socialist equality manifests itself together with the birth of the new society, and unfolds itself in close association with the growth of this new society. Dependent on the progress made by the social and economic system also the content of socialist civic equality will gradually change. Civic equality in the socialist sense will assert itself in an ever more comprehensive manner and with growing significance, and the system of political, legal, economic, social, etc. guarantees ensuring its realization will continually grow in strength. It also follows that *socialist civic equality in comparison to the citizens' equality of rights, is a wider concept.* In fact the former means the political-sociological

¹ Engels, *Anti-Dühring* (Hung. ed.), Budapest, 1948, pp 100—101.

² Szabó, I., *Az emberi jogok mai értelme* (Modern concept of human rights). Budapest, 1948, p. 151.

definition of the actual position of the citizens, whereas the latter is merely the legal specification, the expression of the legal status of the citizens. Under the socialist system there is no fundamental, no essential contradiction between the actual position of the citizens and the constitutional definition of their legal status.

Although the socialist constitutions express the idea of civic equality in conformity with the true situation, still no clear-cut authentic picture can be drawn of the progress of civic equality in the various domains of life purely from the constitutional regulation of this equality, and statutory regulation relying on the former. In point of fact civic equality is inseparable from the political, social, economic, cultural, etc. guarantees and conditions which promote its concrete practical realization. This of course should not be interpreted as a depreciation of the constitutional regulation and legal guarantees of civic equality, but merely refers to the relative value of their effects. Lenin writes that "the equality before the law is not real equality yet". Similarly, the content of socialist civic equality cannot be narrowed down to the realization of an equality of rights. The purpose of building the socialist society is to create the conditions for securing of civic equality in the reality of everyday life, and in the various spheres of life.³ A set of adequate socio-political, economic, cultural, etc. conditions has to be present in order that civic equality and its constitutional guarantees should come into full display.

The study of the factual social enforcement of civic equality is usually relegated into the background in bourgeois scientific literature, or severed from its true content and social significance. It is often narrowed down to abstract, formal relations of law of the equality of rights and the equality before the law, torn away from their social background. Yet it is also beyond doubt that some of the fastidious representatives of bourgeois political, sociological, and legal literature, when dealing with the problem of civic equality, are no longer satisfied with this approach, and go beyond the abstract philosophical or formal legal relations of the concept of equality, influenced by the ideology of natural law. Such writers recognize that civic equality comes about and manifests itself in a definite, concrete, historical form determined by the objective social-economic relations.

This change in the approach is not only the recognition of what Tocqueville described as the growing demand of modern society for equality, but in first order the reflection of the growing political weight of the toiling masses, in particular of the working class, and their demands directed to the realization of civic equality. In addition, the socialist interpretation of equality has strongly influenced the more modern formulation of civic equality, in the Universal Declaration of Human Rights, and its definition expressed in some of the recent bourgeois constitutions. This has been recognized also in bourgeois political and legal literature.⁴

³ Cf. the collected works of Lenin, Vol. 30., Budapest, 1953, pp 372—373.

⁴ See: *Autour de la nouvelle déclaration universelle de droit de l'homme*, UNESCO, 1949, pp 20—21.

A deficiency of socialist legal literature is that the concrete, differentiated analysis of political and legal guarantees, further the study of their enforcement in close interaction with the economic or social guarantees are eclipsed by the general investigation of the fundamental guarantees of equality as incorporated in the economic and social system. Socialist social and economic development, the rise of the educational level, all tend to create still more complete conditions for the enforcement of civic equality in the various spheres of life, and in consequence thereof also for the expansion and development of the system of constitutional and legal safeguards. A study of these latter problems would therefore be significant not only with regard to the modern constitutional expression of socialist equality of rights, but in first order because the development of the constitutional and statutory safeguards amount to an important condition for the enforcement of the fundamental guarantees also in everyday practice.

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In connection with the study of the problems of civic equality often the problem of the reciprocal relations between equality and liberty crops up. A characteristic trait of bourgeois literature dealing with the problems of equality is, even today, that the principles of equality and liberty are studied in juxtaposition, as principles excluding one another. Accordingly, the principle of liberty is the guiding idea of the bourgeois social and economic system, for within its framework the security of the sphere of personal independence, the idea of the freedom of action and of opportunity are predominant. At the same time the socialist system of society gives priority rather to the creation of equality among men, which according to bourgeois literature should bring about a limitation of the freedoms, inasmuch as the levelling of conditions was in conflict with the freedom granted by society, the realization of the principle of freedom necessarily entailed inequality, etc.⁵ The content of both principles has to be restricted correspondingly, they argue, and equality has to stop short of phenomena which are associated with unalterable differences, for pressing the demand of equality will eventually lead to an equality without freedom, etc.

Such disquisitions of an abstract character are also according to the bourgeois literature "strongly philosophical abstractions", which undergo significant changes when emerging in concrete governmental and social relations.⁶ "Liberty, Equality, Fraternity" influenced by the ideology of natural law and consolidated into a harmonic unity, at their time expressed the principal demand of social development. The demand of the rising bourgeoisie, pioneering social development, for political and legal equality and for freedom, and the expression of this demand in the

⁵ *Burdeau*, G., *Les Libertés publiques*, Paris, Librairie Générale de Droit et de Jurisprudence, 1961, pp 79–80, p. 84; *Fleiner*, E., *Schweizerisches Bundesstaatsrecht*. Zürich, 1949, p. 403; *Sundbom*, J., *Über das Gleichheitsprinzip als politisches und ökonomisches Problem*, Walter de Gruyter, Berlin, 1962, pp 21–22, p. 51.

⁶ Cf. *Leibholz*, G., *Die Gleichheit vor dem Gesetz*. München – Berlin, 1959, pp 16–24.

Déclaration and early bourgeois constitutions, had a more or less clear-cut content, because they were *expressive of a definite social tendency* directed against a feudal governmental and social system.

Representatives of bourgeois literature discussing the relations between civic equality and freedom study the content of the notion of equality and freedom often in an unhistorical form, by ignoring social reality. Most they do is to confine themselves to the formal statement that in the majority of modern constitutions "equality has become a guiding principle" and that the principle of equality before the law has deprived liberty of its priority, etc.⁷ However, they fail to recognize that with the development of society earlier concepts have become dusty, and that "a more accurate method of expression has been found."⁸ Bourgeois writers have put a sign of equality between the mechanical equality idea of the Utopians and the socialist notion of equality. They describe the latter as something which wants to create an equal position for all *against* natural social differentiation. According to these theories the immutable differences originating from natural differentiation, short of which demands for equality have to stop, are the basic institutions of the bourgeois social and economic system. Such is, in first order: private ownership of the means of production, whose restriction is recognized only in so far as this is limited to a certain, justified state control of utilization. Accordingly, real equality between political and economic freedom does not presuppose, nor does it necessitate a change in the social and economic structure. An equality of this type is realizable even under existing conditions, when the plenty forthcoming from the exploration of the potentialities and resources allows of an equalization of the conditions. The guarantee of equality is a matter of legislation only where want has to be organized. The securing of civic equality is associated with the creation of the "social state" or the "welfare state", or with the prospects of an "American way of life".⁹ Antagonistic class differences are replaced by a division of society into different "communities of value" (Wertgemeinschaft) as the factor determining inequality. According to this theory, different "communities of value" standing above classes, nations, religions, etc. bound together by different ideas of value (Wertvorstellungen) come into conflict in the society, and this produces the unequal position of the citizens, etc.¹⁰ These theories substitute strongly abstract assumptions for the true social-economic causes of civic inequality, which is particularly striking when it comes to comparing the constitutional declaration of the equality of rights and freedoms on the one, and the social practice of their realization on the other part.

The deepening rift between the constitutional declaration of civic equality and social reality in the modern bourgeois state is obvious to an extent that it is recognized by quarters holding most different ideological, social-political,

⁷ Sundbom, J., op. cit., pp 22—23; Cassin, R., *Les droits de l'homme en droit comparé*, Luxembourg, 1959, I., p. 18.

⁸ Marx—Engels, *Selected Works*, Vol. II., p. 36 (Hung. ed.).

⁹ Cf. Burdeau, G., op. cit., pp 79—82; Fleiner, E., op. cit., p. 403.

¹⁰ Sundbom, J., op. cit., pp 24—25.

religious opinions. Pope John XXIII, in the chapter on "The Mission of an Expansion of Human Rights" of his Encyclical Letter "Pacem in Terris" e.g. calls attention to the circumstance that for want of the appropriate action of public power, especially in these days, economic, social, cultural inequalities are increasing, and consequently "The principal personal rights of man remain void, and the performance of the appropriate duties is also jeopardized". G. Burdeau writes that although equality before the law served the growth of the capitalist system, because it opened the scope to free initiative, still the equality of rights was inadequate to counterbalance the conditions of inequality, i.e. the inequality at the start. And this drawback afflicts the poorer classes, etc. This explains why today attention is directed to the social rights of the workers, besides the traditional freedoms of the citizens. The function of social legislation is, he writes, on the one part a more uniform redistribution of goods, and on the other the improvement of the material and moral security of the workers, so that the search for welfare should not only be promoted by equal opportunities for all, but also by the equality and safeguard of the means.¹¹

However, the basic causes of civic inequality cannot be eliminated by a more effective interference of the public power, the extension of social legislation. Their elimination presupposes the metamorphosis of the bourgeois social and economic system. Nevertheless, the recognition that with the extension of the interference of the executive power at least formally certain modern conditions civic equality and freedom can be brought about, is at the same time a recognition of that the traditional notion of civic freedom and equality should be made subject to revision, that the functions of economic and social rights have grown in importance in the sphere of civic equality and freedoms.

From what has been set forth above, it stands to reason that there are several approaches to the concept of civic equality and freedom. Approaches from a different outlook, or economic and social base, will eventually lead to different conclusions. Both notions, i.e. civic equality and freedom, may be studied in a variety of relations, and their study would hardly be possible unless their contents and the framework of their social effectiveness have been defined with sufficient precision.

In this paper first of all the content of civic equality and the development of its constitutional regulation will be investigated. To start with, it will be assumed that the realization of socialist civic equality, and the reinforcement of its safeguards, among these of the legal guarantees, are not autotelic, but are requirements concomitant with the development of the socialist system of society. They react on the consolidation of socialist society, and at the same time serve the truly free unfolding of the potentialities and faculties of the personality.

¹¹ Burdeau, G., op. cit., pp 82—83.

2. THE EQUALITY OF RIGHTS AND THE EQUALITY BEFORE THE LAW IN THE AGE OF THE BOURGEOIS REVOLUTIONS

The manifestation of the idea of equality in the political sense was closely associated with the currents in the society of the 18th century, in first order with the bourgeois revolutions. In general the entry of the idea of equality on the scene is associated with the War of Independence of the North American colonies and the French bourgeois revolution of 1789. However, it should be noted that as the claim for equality before the law the idea of equality emerged as a proposal of the radicals of the Great English Revolution between 1640 and 1660. The proposal bearing the title "Agreement of the People" of 1647, in particular emphasized that each statute promulgated, or to be promulgated, should be equally binding on all persons, and position, estate, document, official rank, birth, or rank should not qualify for an exception from under regular legal proceedings to which all other persons were subject (Clause 4). The document defined the demands of the poorer section of the lesser nobility and especially of the burgesses against the privileges of the feudal order.

The American Bills undoubtedly had a marked influence on the notion and content of civic equality as shaped on the European Continent.¹² However, whereas the American bills primarily tended to safeguard the rights threatened by the English, and the claim for freedom and equality emerged in this connection (the institution of slavery was still maintained), in France the bourgeois revolution made political and legal equality its catchword in the "Declaration of the Rights of Man and Citizen" of 1789, as one of the principal claims of the rising bourgeoisie against the ancient feudal discriminations and privileges. Jellinek, in his analysis of the first manifestation of the idea of human rights in the constitutions born from the American War of Independence and the various bourgeois revolutions, comes therefore to the conclusion that Articles 4, 6 and 13 of the French Declaration expressed equality before the law in a far more definite form than did the American Bills, and even in a quite different manner.¹³ The idea of equality found an expression in a concrete form in the documents of the French Revolution with the claim for civic equality and equality before the law. The fact that civic equality appears with a definite class content in a particular stage of social development is by itself an indication of that, deprived of its social content, the notion of equality cannot be grasped in either its origins or subsequent evolution, and by merely studying the correlations of the formal elements. Similarly, neither the interrelations of civic equality on the one part, and the fundamental rights and duties of

¹² The Declaration of Independence announces that "all men are created equal"; the formulations of the Bill of Rights of Virginia and the Constitution of Pennsylvania are on the whole uniform with that of the Declaration, with the difference that equality is associated with freedom, viz. "all men are, by nature, equally free", etc. The constitutions of the other union states define the principle of equality in a similar form.

¹³ Jellinek, L. G., *Die Erklärung der Menschen- und Bürgerrechte*, Leipzig, 1895, pp 22—23.

the citizens on the other, can be exposed without bearing in mind their social contents.

The tendencies of civic equality could rely on a background of a forcible and effective ideological preparatory work, the work of the excellent philosophers of the Age of Enlightenment. According to the fundamental thesis of English and French philosophers setting out from the concept of the "social contract" (*contrat social*), in the natural condition, before the birth of the state, man had been equal. This condition came to an end with the social contract. As Montesquieu expressed it, in his natural condition man was born in equality. However, he was unable to continue in this state, and mankind organized in states. In the organized society man lost his original equality, and could not become equal unless by law.¹⁴ According to *Le Contrat Social* of Rousseau, by the social contract man advanced from the state of natural freedom to the state of freedom relying on a contract. So all members of society with all their rights coalesced into the whole community and when "each member of the society completely surrendered himself, all would be in an equal position. When conditions would so become equal for everybody, then nobody would have an interest in turning them prejudicial for others". In Rousseau's opinion equality was "something that Nature had placed among mankind", whereas the differences "have been set up by man".¹⁵ The representatives of the idea of natural law laid stress on equality and liberty, as human rights which mankind possessed already in its natural state.

The physiocrats (Quesnay, Turgot) adopted the theories of human rights as taught by natural law, however, they were not satisfied with the abstract explanations of the philosophers, and tried to explore the driving social forces in the background. It was in this way that the right and freedom of private ownership, the freedom of work (which essentially meant employment and the freedom of paid work), i.e. the freedom of the capitalist form of production, came into prominence.

Undoubtedly the teachings of natural law had a substantial share in the propagation of the ideas of civic equality and equality before the law. The teachings of natural law backed up the demands of the striving bourgeoisie: the abolition of the prerogatives and the privileges of feudal society, and equal chances and conditions in the various scopes of political and social life.

A study of the function and spread of the egalitarian ideas will prompt the student to the conclusion that it is the economic and social evolution which eventually elicited the trends towards civic equality, and by defining the character, contents, and framework of these trends at the same time served as the motives of egalitarian doctrines and teachings.

The claims for civic equality and equality before the law had their origin in the capitalist relations of production then in a state of evolution. The bourgeoisie, with its increased economic strength, came to recognize that feudal conditions

¹⁴ Montesquieu, *L'esprit des lois*, Book VIII, Chapter III. (Quoted from the Hung. ed., Budapest, 1962, Vol. I. p. 259.)

¹⁵ Rousseau, J. J., *Le contrat social* (Quoted from the Hung. ed., Budapest p. 100); *De l'inégalité des hommes* (Budapest, 1905, p. 5).

and feudal law were obstacles in the path of development. Hence the claims of the bourgeoisie were not of an economic character in the first order, but purposed the abolition of the privileges of a feudal society defined by feudal law. As regards their political, legal, and social position, the citizens disposing of economic positions of growing importance, the artisans and merchants were under a heavy handicap with respect to the nobility then in the enjoyment of feudal privileges. As Engels wrote, the racecourse was nowhere free, and for the bourgeois racers the chances were nowhere equal, although this was the first and more and more urgent demand.¹⁶ Feudal law was typically and overtly class law, it determined the social position of men on the ground of feudal landed property. The landed property was handled as something indivisible, and the law even kept it together. All this, of course, strongly hampered the progress of the productive forces in both industry and agriculture. At the same time capitalist development promised better opportunities and greater freedom for the classes emerging from feudal oppression. Contrary to the feudal society, capitalism thrust the individual into prominence, with his "natural and inalienable" rights. It replaced collective feudal property by inviolable private property. Accordingly, the right to property was no longer the collective right of a layer of society, but one of the natural and inalienable rights of the individual. Owing to the deprivation of property of its personal character, and the liberation of the labour force of serfs from feudal fetters, the potentialities for the growth of capitalist production became wide open.

As was pointed out by the representatives of the upward striving bourgeoisie: the demand for civic equality meant the realization of a social-economic system which in contrast to the feudal privileges was levelled in a sense that it held out equal chances of success to each member of the society. It was for this reason that the oppressed social classes supported the claims of the bourgeoisie. However, the bourgeois claims for civic equality did not include the creation of social or economic equality. As is obvious from the literature of the Age of Enlightenment, the various declarations embodying the claims of the rising bourgeoisie, and from the constitutions introduced after the bourgeoisie had come to power, the trends towards civic equality were directed to *another kind* of economic, social, political, and legal aims.

The Déclaration des Droits of 1789 announced equality before the law, equality before the forum, equal chances of appointment to public offices (Article 6), and equal sacrifice of taxation (Article 13). Equality of man was always set down against feudal privileges, and was formulated as "equality by nature and before the law" (Article 3 of the Constitution of 1793). So there was no question of making use of the law for an equalization of conditions. Only the privileges and obligations associated with feudal landed property were of necessity affected.¹⁷ In its Decree of the 18th March, 1793, the French Convent declared that the death

¹⁶ Engels, *Anti-Dühring* (Hung. ed., Budapest, 1950, p. 109).

¹⁷ See the French Act of March 15–May 31, 1790, on the abolition of feudal rights; the Decree of the 25th August, 1792 on the agrarian legislation of the Constitutive Assembly.

penalty would be inflicted on any person "who proposes or attempts to extend the agrarian laws or other laws, or revolutionary measures to non-feudal land, commercial, or industrial property". In the constitutions of the bourgeoisie now in possession of power, the respect for, and protection of, property, the freedom of private property were given priority before the claims for equality, and enumerated among the natural and inalienable rights. (Chapter I of the Constitution of 1791, Article 2 of the Constitution of 1793.) The bourgeoisie made endeavours to consolidate the existing social order, it adapted its claims for equality to this order, and considered these claims realizable merely in the declaration of the identity of the legal status of all citizens, and not in assuring equal chances and actual economic means for all.

So the egalitarian tendencies of the rising bourgeoisie manifested themselves as a concrete claim for civic equality and equality before the law at a definite stage of social evolution, rather than in the form of abstract generalizations. These tendencies of the bourgeoisie were directed against feudal discriminations of feudal law, and against its particularism and privileges.

The philosophers of the 18th century, the representatives of the rising bourgeoisie, had not started from the recognition of the class-stratification of society, nor had they studied the reasons which had elicited the division of society into classes. With the proclamation of civic equality and the equality before the law they simply tried "to pass themselves off as the representatives of the whole suffering mankind and not of a given class".¹⁸ They announced the creation of a rational, universal social system, and the shaping of rules, which independently of the historical growth of society would be valid in all times and for all societies in general. They promised the construction of patterns or models which would be equally applicable to the various societies of man.

The expression of equality in a legal form was a decisive phase in the rise of the bourgeoisie to power. Civic equality and the equality before the law were organic parts of the bourgeois revolution, and notwithstanding their inherent contradictions amounted to momentous feats in the course of social progress.

3. REGULATION OF THE EQUALITY BEFORE THE LAW AND EQUALITY OF RIGHTS IN THE BOURGEOIS CONSTITUTIONS

The constitutional declaration of the equality of rights and the equality before the law was coeval with the recognition of the emancipation of the bourgeoisie. The bourgeoisie was satisfied with the political and legal declaration of equality, and its constitutional recognition; however, at the same time it never intended to help this "natural and inalienable right" to universal actual realization.

From earlier constitutional regulations it appears that civic equality and the equality before the law essentially meant that — in principle — statutory provisions were equally valid for all. The idea of civic equality in this sense in first order

¹⁸ *Engels*, op. cit., p. 18.

served as a guarantee of the economic, political, social equality of the rising bourgeoisie. It is characteristic that the principle of civic equality found its exposition in the minutest details just on the economic plane in the Code Civil. Not even the Constitutional Charter of June 1814 of the period of feudal Restoration touched the provisions on civic equality of the earlier constitutions. Seven of the twelve articles of the Preamble to the Charter served the reinforcement of the achievements of civic equality, i.e. equal duty of taxation, the system of private property, the principle of equality in criminal procedure, etc. In conformity with the feudal-bourgeois compromise the Charter declared that all French were equal before the law whatever their title or rank might be (Article 1).

In Hungary the statutes approved in the period of the bourgeois revolution of 1848 did not specifically declare civic equality a general principle of law, and the principle was only pronounced in connection with the abolition of certain feudal institutions and feudal privileges. (Act VIII : 1848 on general sharing in taxation, Act IX : 1848 on the abolition of socage, Act XI : 1848 on seigniorial authorities, Act XV : 1848 on the abolition of entailment or perpetuities). As Ernő Nagy writes, following from the spirit of the legislation of 1848, civic equality was only regarded *as the purpose of legislation*, and not as an already binding principle of law, which would have meant the repeal of conflicting rules or the abolition of institutions disagreeing with this principle. He arrived at the conclusion that after 1848 civic equality existed in Hungary only *in so far as it found actual expression* in the particular acts of legislation. "It is not civic equality from which inference may be made to the institutions, on the contrary, it is in the particular institutions that civic equality has to be discovered in order that its existence might be recognized".¹⁹ Act I : 1848 of Transylvania declared civic equality in a more generalized manner. It declared that "... civic equality is recognized as an eternal and unchangeable principle for all, and legislation contrary to it is herewith declared abolished". From the Preamble to the Act it appears that civic equality applied also in this case to the abolition of feudal privileges. That is, these acts of legislation were not tantamount to the *general* recognition of civic equality.

With the conclusion of the period of the bourgeois revolutions, the consolidation of the power of the bourgeoisie, or in certain countries with the class compromise entered into with feudalism, the sphere of the general principle of civic equality and its legal guarantees as promulgated in the Déclaration of 1789, and in the constitutions of 1791 and 1793, began to narrow down, and gradually it received a constitutional formulation only in the principle of equality before the law. As G. Burdeau notes in his work on civic rights, published in 1961, "after the conclusion of the revolutionary period no system dared to revert to the principles declared in 1789".²⁰ This tendency, i.e. the class character of civic equality earlier declared with a claim to universality, is expressed in a clear-cut form in the Belgian constitution of 1831. This constitution preserves from the principle of

¹⁹ Nagy, E., Magyarország közzjoga (The constitutional law of Hungary). Budapest, 1897, p. 145.

²⁰ Burdeau, G., Les libertés publiques, p. 83.

civic equality and its guarantees only such points and to such extent as was acceptable by the bourgeois state. The constitution declares that "There shall be no discrimination by estates in the state. The Belgians shall be equal before the law, and only Belgians can hold civil and military offices . . ." (Article 6). The provisions of the Belgian constitution as regards civic equality are significant for the purposes of future bourgeois constitutions, because their influence is distinguishable not only in the bourgeois constitutional charters of the 19th century, but also in those of the 20th century, in particular those introduced after the First World War.

The principle of civic equality never asserted itself at the outset, and does not assert itself even today, in many a bourgeois state, in the sphere of the exercise of political rights by the oppressed classes. In the bourgeois states large sections of the working class and of the peasantry, which formed the decisive majority of society, were excluded from franchise, and property qualifications, polling procedures, etc. impose severe restrictions on the exercise of an equal franchise even today. In Hungary it was the Republic of Councils of 1919 which first declared equal franchise, but after its defeat the strongly limited franchise based on property qualification had been restored. In many of the union states of the United States of America there are still property qualifications in force which are conflicting with the principle of civic equality.

The restriction of civic equality essentially to the equality before the law, which admitted a variety of limitations of civic equality, suited the ruling classes in every respect. For this reason the equality before the law has been taken up in every bourgeois constitution, even if in a variety of formulations. In the majority of bourgeois constitutions introduced before the Second World War the declaration of civic equality and its safeguards were essentially restricted to this equality before the law.

In the course of its historical development the principle of equality before the law was therefore binding on the law-applying organs, in first order the judiciary and the civil service, and enjoined on these to apply the law uniformly for all. This found expression also in earlier literature on jurisprudence. For example, Bluntschli understood by civic equality in first order "the equality before the tribunal". According to Dicey, the idea of equality, as accepted by England, could be defined by that all classes of society were subjected to the same laws. On analysing the content of the rules of law he made the equality before the law one of the guiding principles. He said that, nobody was above the law; all men irrespective of their rank or position were subjected to the ordinary law of the country, and could be arraigned before the regular courts of law.²¹

Certain provisions of the constitutions of the 19th century seemed to recognize that the equality before the law, or its declaration in the constitution, did not anymore satisfy the cry of the broad masses for equality, and therefore the demand for civic equality must be allowed a wider scope. For example, the French Consti-

²¹ Dicey, A. V., *Introduction into English Constitutional Law*.

tution of 1848 declared the abolition of slavery in the French colonies, the respect for foreign nations (the French state would not carry on wars of conquest, or use armed forces against the liberty of any people); differences of birth, classes, or castes, were abolished for ever, every citizen might hold any public office, exclusively according to his merits. The constitution declared the equality of relations of employer and employee (Article 13). This also indicated that under certain conditions, to reinforce governmental power, the bourgeois state had to abandon its earlier policy of non-interference in economic activities.

With the advance of times the formal legal enforcement of equality before the law gradually, but obviously, was becoming contradictory with the growing economic, social, and political inequality. Bourgeois society and the capitalist form of production intensified the antagonistic contradictions of bourgeois class society, and visualized them in a novel form. Besides the fundamental inequality following from the class position, in particular racial, national, and sex discrimination and inequality asserted themselves.

The social reality clearly confirms the insufficiency of exclusively legal guarantees, or in other words, the shift of the legal safeguards of equality to the economic plane. Labour gaining in number, organization, and political maturity, has become dissatisfied with the declaration of civic equality and the equality before the law, with their formal legal safeguards, inasmuch as historical experience proved their fictitious character. Labour now struggles for the economic-social safeguards of civic equality. However, within the framework of the bourgeois state this endeavour of labour has found expression merely in the form of the constitutional declaration of certain economic guarantees.

For example, the Weimar Constitution of August 1919, besides declaring the equality of the citizens before the law, the abolition of privileges of birth or origin, the equality of the fundamental rights and duties of men and women (Article 109), contains a promise for the introduction of some of the economic safeguards of equality. The Constitution declares that both employers and employees have to cooperate on an equal basis as regards establishment of wages or salaries and the conditions of employment (Article 165). Every citizen should be afforded an opportunity of sustaining himself from the proceeds of his work. If appropriate employment cannot be secured for him, then he should be provided for by special legislation (Clause 2, Article 163). According to the provisions of the constitution, the state makes a promise to provide employment, or in want of employment, provide for its citizens in need. As pointed out by the commentary to the Constitution, the article quoted here does not ensure an actionable right, it merely announces a programme. On the whole, this thesis of the Constitution is but a circumscription of poor-relief, and special legislation in this sense is but the statutory regulation of the distribution of doles at the domicile of the indigent, etc.²² At the same time the relevant provisions of the Constitution in a very decided form declare the inviolability of private property. The Constitution

²² *Bredt*, L. V. J., *Der Geist der deutschen Reichsverfassung*. Berlin, 1924, pp 337–338.

emphasizes that "legislation and civil service have to stand by an independent middle class" (Article 164). According to the comments made to this provision of the Constitution, the independent middle section should be backed in agriculture, industry, and commerce by both legislative and administrative measures; these classes have to be protected against excessive burdens and absorption by other classes.

Among recent constitutions those of the German Federal Republic of 1949, and of France approved in 1958, again narrow down the claim for the enforcement of civic equality. Essentially these constitutions content themselves with the solemn declaration of general equality and the equality before the law. Although the Constitution of the German Federal Republic also declares the principle that the citizens may enjoy no benefits, or suffer drawbacks, for reasons of sex, race, language, creed, denomination, or political opinion, still as is known the Federal Constitutional Court with a decree passed in 1956 suppressed the German Communist Party. The French Constitution of 1958 guarantees the equality before the law of all citizens irrespective of origin, race or religion (Article 2); in respect of former colonial territories the Constitution specially emphasizes that all members of the Communauté Française have equal rights and duties irrespective of origin, race, or religion (Article 77). At the same time the Constitution assigns the regulation of women's emancipation and of the safeguards of civic equality of an economic character to the legislation. In the Constitution of 1946 all these had been still included in the Preamble. In point of fact the declarative expansion of civic equality and the equality before the law is in practice accompanied by a restriction or jettison of certain concrete, in particular economic, safeguards of equality. The Greek Constitution of 1952, and the Danish, of 1953, restrict civic rights attached to equality also to the equality before the law, and the qualification for public office without discrimination. The Danish Constitution adds to this that when required by social welfare, limitations may be introduced in the qualification for public offices (Article 74).

Of the bourgeois constitutions approved after the Second World War, the Italian Constitution of 1948 deserves special attention. Here the provisions regarding civic equality reflect the appreciable influence of the forces of democracy and of the broad masses. In its introductory principles the Constitution declares that every citizen possesses equal social dignity irrespective of sex, race, language, religion, political conviction, personal and social status, and is equal before the law. In addition, the Constitution declares that it is the duty of the Republic to remove the obstacles of economic or social character which actually restrict the freedom and equality of the citizens, hamper complete unfolding of human personality, and the truly effective participation of each worker in the political and social organizations of the country (Article 3). The Constitution lays down the protection of lingual minorities (Article 6), and contains several provisions regarding the emancipation of women. It declares that matrimony relies on the moral and legal equality of the parties within the limits the legislation set for the safeguard of the unity of the family (Article 29); that wage-earning women have

the same rights as wage-earning men, and receive equal pay for equal work; that the conditions of work have to be such as to enable women to ply their family duties, and that the interests of mother and child should adequately be protected (Article 37). According to the Constitution, citizens irrespective of sex may on equal terms enter civil service, or hold public offices, or elected functions (Article 51). The provisions of the Italian Constitution regarding civic equality are, together with the democratic character and provisions of the Constitution as a whole, truly significant achievements of the toiling classes, which, however, are programmatic rather than concrete. The constitutional theses still waiting for enforcement, yet binding on the state, are highly significant in the struggle for the realization of democratic rights.

Bourgeois forensic literature (like to fundamental rights in general) attributes to the theses of equality as laid down in the constitutions often a programmatic significance only. They do so even when in some of the constitutions it has been recognized that the constitutional declaration of civic equality and equality before the law is by itself insufficient and that economic safeguards are required for their realization. Bourgeois writers on jurisprudence like to point out that the articles of bourgeois constitutions of this nature are "slightly" inaccurate, and have a value of principle only, etc.²³

According to modern bourgeois writers on law dealing with problems of civic equality, the principle of civic equality has in general become a guiding idea, it has been removed from the general catalogue of civic rights, or rather resolved in the particular civic rights. It should be noted that at the turn of the century, in Hungary Professor Ernő Nagy gave a similar construction to the constitutional declaration of equality of rights. He considered civic equality a basic idea which "serves as guidance, or binding legal thesis at the estimation of the political organization or of the particular institutions of the state."²⁴ As formulated by the French Déclaration and by the earlier bourgeois constitutions, the equality before the law by itself does no longer satisfy the exigencies of the modern age. As stated by writers on law, the principle of equality before the law is no longer restricted to the principle of legal equality, as formulated by the Déclaration of 1789, but it also includes equal protection by the law, equality of treatment, equal chances of education and training, equal chances of holding public offices, irrespective of sex, race, language, religion, birth, social position, and political opinion, etc.²⁵ This position was also voiced in a conference of German constitutional lawyers held in Münster, in 1927, where, as G. Leibholz wrote, the hitherto dominant and approved concept of "equality before the law" was considered too narrow, and a stand was taken for a wider construction of equality.²⁶ G. Leibholz construed

²³ Giese, L. G., *Die Grundrechte*. Tübingen, 1905, pp 9—10; Leibholz, G., op. cit. p. 220; Alcíater, M. — Fois, P., *La reconnaissance et la garantie des droits de l'homme dans la constitution italienne. Essais sur les droits de l'homme en Europe*, Tome I. Paris, 1959.

²⁴ Nagy, E., op. cit. p. 145.

²⁵ Cf. Cassin, R., *Les droits de l'homme en droit comparé*. Luxembourg, 1959, p. 18.

²⁶ Leibholz, L. G., op. cit., p. 195.

equality before the law in a wider sense so as to be binding on the organs of legislation, too, and not only on the executive organs. The guarantees of equality should be created in first order in the legislation, for the restriction of equality to the executive organs would lead to arbitrariness. According to Leibholz, the principle of bourgeois society, the universal rule of law, and the whole ideological history of the principle of equality proved that these guarantees lay with the legislators, and not in the application of the law, the latter being just an "ancient liberal" heritage. He accepted the enforcement of equality in the legislation in a sense that this meant the approval of acts of legislation which created equal conditions for each citizen. At the same time the requirement of equality included an injunction for the legislator to treat essentially equal things as equal, and unequal as unequal. Now what was essentially equal and what essentially different should be left to the discretion of the legislative bodies.²⁷ A similar concept of equality found expression in the Constitution of Eire of 1937, which after laying down the equality of all citizens before the law also declares that the State has to consider in its legislation the different physical and mental faculties and potentialities, further the social functions (Clause 1, Article 40). According to Leibholz, the accurate definition of the discretionary powers of the executive or the specification of the jurisdictional limits of these powers, was of extreme significance. At the same time he also admitted that a *dénouement* of the content of equality before the law in this sense was in reality circumstantial and extremely complicated.²⁸

The protection of the principle of equality before the law against an arbitrary construction by the executive organs, — the enforcement of the principle of equality in the legislation, and the "general rule of law" — guarantee the principle of equality in the formal sense at most. The ruling classes by expressing their will in enactments essentially fix the inequalities which manifest themselves in the many fields of the economic, political, and social life of bourgeois society.

At the present stage of social development, the restriction of civic equality to the equality before the law does not even meet the exigencies of a bourgeois state, and the necessity arises therefore of the expansion of the conceptual sphere of civic equality, or to its enforcement to a greater extent — at least in certain spheres.²⁹ However, bourgeois jurisprudence by limiting its investigations to the formal legal relations of civic equality, for practical purposes detaches essence and enforcement of equality from its own social-economic content, although when the latter is ignored, the fundamental causes of inequality will escape disclosure.

The bourgeois declarations of fundamental civic rights and the theses of bourgeois constitutions embodying the principles of general civic equality and the equality before the law amounted to a remarkable progress in respect of feudal and particular rights and privileges, or overt economic, social, and political inequality. However, the fundamental contradictions of the capitalist social and economic system carried in themselves the limitations of the materialization of

²⁷ Ibid., pp 216, 231 and 237.

²⁸ Ibid., pp 201 and 216.

²⁹ See e.g. the claims of the negroes for equal rights in the United States.

civic equality, and consequently, of the equality of rights and the equality before the law. So the relevant theses of the bourgeois constitutions mostly remained but solemn declarations, and could not prevent economic, social-political inequality from growing in intensity.

4. CONSTITUTIONAL ENACTMENT OF CIVIC EQUALITY IN COUNTRIES LIBERATED FROM COLONIAL SUPPRESSION

In the majority of Afro-Asian countries liberated from colonial status since the Second World War the new constitutions, unlike bourgeois constitutions, bring civic equality under regulation in a wider sphere. In these constitutional provisions, as in general in the constitutional regulation of fundamental civic rights, the particular states have accepted the freedoms specified in the United Nations Charter and in the Universal Declaration of Human Rights approved in 1948. The provisions of the constitutions of some of the new African states regarding fundamental rights reflect the influence of the French Constitution of 1958. (The constitutions of the Cameroons and Dahomey of 1960, etc.). However, it is beyond doubt that the more detailed solemn declaration of equality, going beyond the equality before the law, is at the same time a manifestation of the general trend towards equality of the suppressed peoples. This is quite understandable, because the colonial powers extended equality formally only to the citizens of the metropolitan state, and not to the population of their colonies.

The liberated countries, many of which set out on the path of building a national state after conditions of feudal, often tribal, ethnical, national, and colonial dividedness, in the preambles of their constitutions declare that human rights are the due of all, irrespective of race, religion, nationality, origin, and that all nationalities are equal. The constitutions promulgated during the latter years emphasize the equality of the rights and duties of all men, and the endeavour of the state to provide the means of free development for all of its citizens. Special constitutional provisions under heavy penalties prohibit all racial, religious, ethnical, national discrimination, and regional or particularist propaganda.³⁰ These latter provisions are significant, since the new states which have been formed within the frontiers laid down in the course of colonization, amidst internal strifes, have to build up their economy and their national state amidst the attempts at division and penetration by neocolonialism.

Besides an essentially uniform formulation of the rights within the sphere of civic equality, the constitutions of the emergent countries nevertheless depart from one another in a number of points. Whereas in certain cases the declarative character of equality "as an inalienable and sacred human right" is thrown into relief (the Constitution of the Cameroons of 1960), the declaration of female emancipation may be omitted (the Constitutions of Dahomey of 1960, and of the Congo, of

³⁰ See e.g. the 1957 Constitution of the Malay Federation; Article 45 of the Constitution of Guinea of 1958; Article 4 of the Constitution of Senegal of 1963.

1961); other constitutions expanding the content of civic equality within a wider scope, not only include the principle of female emancipation, but at the same time also the principle of equal pay for equal work. These constitutions admit all citizens to civil service or to any employment or trade on the understanding of equal chances, etc. (Articles 13 to 15 of the Constitution of Burma, of 1948.) The differences in the constitutional enactments of civic equality are closely associated with the specific conditions and the degree of social-political development of the states entering the path of independent national growth.

To what extent the principles and conditions of civic equality as expressed in the constitutions of the new independent states are translated into practice, and to what extent they remain but solemn declarations, will eventually depend on the future shape of social and economic development, and the creation of the economic, social and political safeguards of equality.

5. THE SOCIALIST CONCEPT AND CONTENT OF CIVIC EQUALITY

Socialist civic equality is not merely a repetition of the formal equality declared by the bourgeois constitutions. It is a fundamentally new notion, in its content a more complete equality, whose realization is guaranteed by the safeguards laid down in the socialist system of society and economy. *Socialist equality of rights relies on the principle of social and political equality of all citizens, and embraces political, economic, and social life in its entirety. The basis of this equality is the social ownership of the essential means of production, which puts an end to exploitation for all members of the society. Work has become a social duty for all, and at the same time everybody has equal chances of participating in production, in the life of the society according to his faculties or training, and is entitled to a reward for his work according to its quantity and quality. The principle of socialist equality incorporates the right of participation of all in the decisions on economic, social-political, and cultural problems of the country. The principle of socialist equality is buttressed up by the equality of the legal status of all citizens, i.e. the equality of the fundamental rights and duties of all groups of the population.*

The close relationship between the economic foundations of society and civic equality is obvious. And it is equally obvious that the social and economic conditions play a primary, defining role in shaping the content of civic equality. It follows therefrom that — notwithstanding its historical and lasting significance — general civic equality and equality before the law as declared in the bourgeois constitutions do not, and cannot even, embrace the content of socialist civic equality, together with the rights and their safeguards included in it. The class content of the altered state cannot be squeezed into the framework of legal forms shaped earlier. *The socialist notion of civic equality embraces all the following: socialist equality of rights and equality before the law, the uniformity of the fundamental rights and duties of all citizens in economic, social-political, and cultural life, and the safeguards of civic equality.* At the same time it expresses the new, modern content of civic equality, in the period of building the people's state, when funda-

mental social inequalities have already become a thing of the past, and gradually the social classes themselves undergo a metamorphosis.

From all this it also follows that equality before the law cannot be substituted for socialist civic equality, the two notions not being identical. As a matter of fact, the principle of equality before the law, in its stricter sense, would only mean the uniform *application* of the law for all. However, the latter amounts to no more than the observation of socialist rule of law, which is one of the fundamental requirements of the activities of the whole socialist governmental mechanism. In this sense the notion of equality before the law might as well include the demand for the uniform enforcement of statutory provisions declaring the inequality of certain specific rights of the citizens. However, the requirement of civic equality extends also to *legislation*, and at the same time necessitates the evolution of other fundamental guarantees in the relations between the citizens and the socialist governmental organs. A substitution of the notion of equality before the law for that of civic equality, or the identification of the two notions, would thus amount to the observation of socialist legality, i.e. the correct application of the law. And in this case the evolution of civic equality would remain restricted to the evolution of the safeguards of the rule of law.

The securing of civic equality is an important preliminary condition of the materialization of the fundamental civic rights. Civic equality manifests itself in a more generalized and at the same time wider sense, and consequently the necessity of legal safeguards and their differentiated evolution will make themselves felt in the different scopes of socio-political, economic, cultural, and social life. On the other hand, as has been pointed out in the introduction of this paper, civic equality is closely associated with the actual circumstances and conditions, which influence the effectiveness of the enforcement of the legal safeguards.

Imre Szabó, in his book on civic rights aptly remarks that one of the problems when studying the content of civic rights, is exactly that students of law often disregard the social changes, or their significance. Consequently, the legal frameworks created earlier, for other purposes, will often prove too narrow for the reception of rights particularly saturated with social elements.³¹ We believe that this statement is valid also for opinions identifying the notions of the equality before the law and socialist civic equality.

The content of civic equality is not something permanent, it will vary in each stage of development of socialist society parallel with the evolution of economic, social-political, cultural conditions. In this connection often the following pertinent questions are asked: How does the socialist state ensure the judgement of the attitude of the citizens basing on an equality of laws and rules of conduct, during the period of transition to socialism? Whether or not the equality of rights, their universality, must suffer injuries because the laws of the socialist state do not ensure equal rights for all in all spheres? Whether the laws prohibit organizations or combinations if their purpose is contrary to that of the socialist state (certain

³¹ Szabó, I., op. cit. p. 132.

socialist states have excluded the former exploiters from the exercise of certain political rights)? "As may be seen" writes Imre Szabó "this is a question of the content of the rule of law. Socialist legality means the enforcement of rules of a socialist character and content, i.e. the universal and consistent enforcement of rules of a definite class content, in respect of all. It follows from the essence of the socialist society and the socialist state that a conduct conforming to the socialist system is required *from everybody*, i.e. a conduct conflicting with this system is prohibited *in respect of all*."³² The discrimination between members of the former exploiting classes and of the working classes in the interest of the protection of the new society and its consolidation, or any limitations of the rights of the former were of a transient character only. In the period of transition discrimination and limitations were maintained only until the foundations of socialism have been completed, however, these restrictions did not mean the outlawry of those affected. The rule of socialist law, the exigencies of socialist legality defined the statutory framework of the required restrictions. At the same time it should be noted that exaggerations in certain spheres owing to the effects of the personality cult caused — unnecessarily — the violation of the valid socialist rules of law.

The transition from the capitalist society to the socialist society, the socialist revolution itself (which dependent on the historical and social background of the particular countries, the development of the internal power relations of the classes, and the achievements of the forces of social progress in the international plane, may take place in a variety of forms), implies the limitations of the economic and political rights of the members of the former ruling classes to a greater or lesser degree. Accordingly, the content of the limitations and their duration are defined by a number of factors. So in particular by the keenness of the class struggle in the particular country, and by the attitude of the classes advocating interests conflicting with those of the working classes during the period of socialist construction. For example, in the Soviet Union both the socialist revolution and the introduction of the new social and economic system took place amidst keen class warfare. The open resistance of the former exploiting classes during the civil war, the intervention of the foreign powers, the economic blockade extended over many years, elicited the need for a severe restriction of the rights of the exploiting elements. In this period the Soviet power was unable to grant equal rights to all. The introduction of democracy inevitably became associated with the suppression of the overthrown exploiting classes, consequently with the limitations of democracy and democratic rights in respect of the members and representatives of these classes.³³ It was for this reason that the introduction of complete equality, i.e. the uniformity of the fundamental rights and duties of each citizen, had to wait in the Soviet Union until 1936. In the Constitution of the Russian Soviet Federated Socialist Republic of 1918, members of the former exploiting classes were deprived

³² Szabó, I. *A szocialista jog* (Socialist law), Budapest, 1963, p. 122.

³³ *Lenin, Works*, Vol. 28 (Hung. ed.) p. 254 et seq.

of political rights, franchise and eligibility (Article 65). The constitution authorized the supreme organs of the Republic "... led by the interests of the working class as a whole to deprive certain persons and groups of the rights which they might make use of for injuring the interests of the socialist revolution" (Article 23). For the triumph of the revolution the reinforcement of the leading role of the working classes in the political organization was of particular importance, so that certain preferences were accorded to the workers in relation to the peasantry: workers could elect their delegates to the superior soviets by a preferential franchise.³⁴ The various limitations, granting certain priorities to the working class at elections to the governmental organs resulted from the peculiar conditions of the socialist revolution and social evolution, and were of a transient nature.³⁵

In the majority of the people's democracies the socialist revolution took place in a relatively peaceful form, and so conditions were rather sedate for construction work. In the course of Liberation, owing to the then existing power relations, internal and external, the overthrown ruling classes were paralysed to an extent that they were unable to organize a military onslaught against the strengthening popular democratic system. Consequently, in the majority of the people's democracies it was unnecessary to restrict the political rights of the former exploiting classes, among these their franchise, even during the first stage of development, to the extent as this had been done in the period of growth of the Soviet state until the promulgation of the Constitution of 1936. The introduction of universal, equal, direct suffrage by secret ballot was put on the agenda before the first elections, directly after the Liberation. All disqualifications were closely tied up with the democratic character of the state, and affected war criminals, certain dignitaries of specially named Fascist organizations, certain high ranking officials of the wartime anti-popular system, and did not mean restrictions imposed on a particular class. In certain countries after the introduction of the Dictatorship of the Proletariat, owing to the peculiar trends of socialist evolution, certain primary limitations had to be applied, e.g. the deprivation of certain layers of society of the franchise. In the People's Republic of China, in addition to temporary disfranchisement of counter-revolutionary elements also former landowners insisting on their class privileges were disfranchised. In Rumania the suffrage acts of 1950 and 1952 disfranchised former landowners, industrialists, bankers, merchants, owners of industrial and commercial enterprises employing more than five hands, rich peasants, further persons who had been deprived of political rights for war crimes or criminal acts against peace and mankind. In November 1956, in view

³⁴ It should be noted that the not quite equal ratio of worker and peasant representation did not appear in a disproportion of 1 to 5, as often quoted in bourgeois literature. In the Soviet constitution of 1918, for the elections to the supreme representative body, the urban soviets sent delegates of a number proportionate to the number of voters, whereas the representation of the provinces was based on the number of the population (Chapter, III, p. 256).

³⁵ Cf. *Lenin, Works, ibid.*; The Programme of the Communist Party of the Soviet Union. The Twenty-Second Congress of the Communist Party of the Soviet Union. (Hung. ed.) Budapest, 1962, p. 797.

of the results achieved in socialist construction, the decree-law of the Great National Assembly of the Rumanian People's Republic repealed these limitations for elections to the National Assembly, and in December 1957, also for elections to local government bodies. The constitutions of other people's democracies, so that of Hungary of 1949, imposed no limitations on the franchise of members of the former exploiting classes or class-alien. Members of these classes could go to the polls, but owing to the class character of the state, and also for the reinforcement of the Dictatorship of the Proletariat they were — as a rule — barred from holding governmental posts. This followed from the constitutional thesis that in a people's democracy all power is vested in the urban and rural toiling classes.

However, not only political rights, but also the exercise of other civic rights, are closely associated with the changes in the contents of civic equality. As far as the right to education is concerned, the Hungarian Constitution of 1949 declared that the exercise of this right was ensured for the workers. Although this constitutional formulation lacked accuracy, as primary education was open to all irrespective of social origin, yet it is a fact that in secondary and high-grade education, to balance the handicap of the young generation of worker and peasant origin and to reinforce the new system of society, discrimination by origin was applied. After the foundations of socialism have been laid, and with the gradual disappearance of class differences, discrimination by origin became superfluous, and even injurious to the interests of society. At present in all institutions of higher learning the applicants are admitted by criteria of talent and erudition. Essentially the right of education is shared by all citizens on equal terms.

As proved by experience gathered in the Soviet Union and in other people's democracies, with the consolidation and growth of socialist society the reasons why certain fundamental rights of the former exploiting classes had to be restricted, have gradually vanished. It is a fundamental feature of social evolution that with the liquidation of the exploiting classes the necessity of class suppression ceases, and that democracy gradually changes from the democracy of the majority to one of the whole people. At this stage all citizens may be emancipated fully, irrespective not only of sex, nationality, religion, but also of social origin or former financial position. It is for this reason that in the constitutions of the period of the construction of socialism (the Soviet Constitution of 1963, the Czechoslovak of 1960, the Yugoslav of 1963) political-legal and social limitations of civic rights have been repealed, and all citizens share in rights and duties on equal terms in all spheres of economic, political, social, and cultural life.

As has already been mentioned earlier, many of the modern writers on civil law and sociology object against socialist equalitarian principles and their practical effects on the ground that socialism stretches too far the idea of equality. According to these writers, socialist "complete equality" ignores natural differences, and by forcibly abolishing them, aims at the mechanical equalization of all men. They point out that already at the moment of birth natural differences will arise between man and man, e.g. in talent, sex, health, etc. A consideration of these differences introduces the element of democracy in the social position of the individual.

These writers have held that the socialist equalitarian principle attributes little significance to the differences between men in order to justify the equalization of needs in society. An arbitrary equalization of the needs in opposition to the existing differences cannot be achieved — they say — without suppressing these differences. However, such tendencies of equalization will infallibly lead to a suppression of the type practised by the despotic system, etc.³⁶

The socialist governmental system has never aimed at introducing an equality for all, indiscriminately. This would be Utopian, for there are differences between man and man, originating from natural endowments. "To allege that we want to make all men equal", writes Lenin, "is the emptiest phrase of all, and the inane invention of an intellectual who sometimes in good faith bandies about words, turns them to and fro, however, without any content . . ."³⁷

The socialist equality of civic rights and duties does not mean the neglect of actual differences existing between the one citizen and the other, i.e. the mechanical egalitarianism. This thesis is confirmed by that the socialist constitutions introduce an entire system of economic, social-political, and cultural rights and guarantees, which allow the vindication of the actual differences arising from natural endowments, sex, nationality, domestic relations, erudition, position occupied in social production, health, etc. of the individual citizens.

Unlike the general declaration of equal rights and equality before the law as laid down in bourgeois constitutions, the socialist constitutions from the very beginning did not confine civic equality to a mere declaration of political and legal equality, but attached it organically to economic, social-political, and cultural rights and safeguards, in a gradually expanding sphere. Whereas in countries of the capitalist system, besides inequality resulting from antagonistic class interests also discriminations by sex, nationality, and race developed, the socialist constitutions, exactly in order to translate civic equality into reality, pay scrupulous attention to that equality of civic rights and duties assert themselves irrespective of sex, nationality, and race in all spheres of political, economic, social, and cultural activities.

Some of the bourgeois jurists often attribute a wholly erroneous content to the socialist equalitarian idea, its constitutional and statutory regulation and practice, when they assert that the socialist equality-ideal insisted on guaranteeing equal rights for men and women disregarding all natural differences.³⁸ The socialist constitutions and statutory regulations guarantee equal rights of men and women *not only by declaring* equal rights to work, recreation, education, etc., but also through certain economic and social *benefits which help* to recognize the faculties and the specific social and domestic positions occupied by women. All the specific rights and benefits the socialist state guarantees to women in order to promote

³⁶ Sundbom, L. I., Über das Gleichheitsprinzip als politisches und ökonomisches Problem. Walter de Gruyter, Berlin, 1952, p. 5 et seq.; Neumann—Nipperdey—Scheuner, Die Grundrechte. Berlin, 1954, Vol. II, pp 208—209.

³⁷ Lenin, Works, Vol. 29, p. 363 (Hung. ed.).

³⁸ Beitzke, G., Gleichheit von Mann und Frau. In: Neumann—Nipperdey—Scheuner, op. cit.

their emancipation (such as preferential working conditions, maternity leave, unpaid vacation by reserving employment to nurse infants or sick children, statutory prohibition of heavy or night work, extension of the network of day-nurseries, extension of the system of public utilities to assist women in their domestic duties, etc.) contribute increasingly to female emancipation in every sphere of life. That is, the equal rights of men and women find expression in differentiated rules of law relying on the respective natural endowments of the sexes. Equality of rights is not mechanically uniform, but actually so by the guarantee of rights of uniform value.

The respect for the peculiar interests of the various ethnical groups (in the political structure, the free use of their language and the provision of facilities for instruction in their language, the cultivation of their national culture and customs, etc.) further the statutory prohibition of all national, racial, etc. discrimination, dissemination of hatred or dissension, and their prosecution, — all tend to guarantee that citizens belonging to different nationalities should not suffer any prejudice at exercising their fundamental civic rights. In this sense socialist constitutions decree special rights and guarantees for the safeguard of the equal rights of minorities. However, these differences do not violate the principle of civic equality, they do not reflect social privileges, but the care of the society for the full-fledged assertion of social and civic equality. Socialist law, by laying down these special rules, endeavours to respect the natural differences between man and man, which cannot be abolished in any society, and yet to guarantee equal chances for each citizen for the participation in the life of society, in the social sense of the term.

Civic equality does not imply a mechanical equalization of the concrete rights and duties of all citizens. The rights and duties of those employed in state industry differ from those of the members of farmers' cooperatives. Also the rights and duties of persons working in different vocations or branches differ. Domestic, parental, etc. rights and duties depend on family conditions. These differences are self-evident. Men differ by the way they spend their incomes, or in the method of satisfying their needs, and consequently they may acquire a different financial status. Their mental abilities, their ambitions will of course influence their choice of a profession, their cultural needs and demands. All these will be reflected in the differences between the concrete rights and duties of the citizens.³⁹ These phenomena are legitimate in a socialist society and are in harmony with the basic requirements of the principle of socialist equality.

Marx in "The Criticism of the Gotha Programme" in a convincing manner pointed out that in the first stage of a communist society the actual differences will lead to differing formulations of the legal status of the citizens. Under the conditions of socialism, although no class differences are recognized, the application of equal standards or equal law to citizens, who contribute work of different

³⁹ Cf. *Mitskevich, A. V., Subiekty Sovetskogo prava (The Subjects of Soviet Law)*. Moscow, 1962, p. 74 et seq.

amount to the society, would inevitably lead to an unequal distribution of the necessities of life.⁴⁰ Full equality cannot be guaranteed except under completely equal conditions, whereas under unequal conditions in order to guarantee the principle of equality, different conditions will have to be provided.

Such differentiated requirements are not in conflict with the general guarantee of socialist legality (socialist rule of law). Socialist rule of law in conjunction with civic equality places the socialist legislators before the momentous task of having to consider and express the social and individual circumstances of the citizens in the rules of laws so as to mitigate the effects of disproportions arising from the quality of law. As a matter of fact, rules of law containing exaggeratedly uniform provisions, which would open the gates to the executive organs to a subjective consideration of social and individual conditions or differences, etc. may become the vehicle of decisions violating the principles of socialist legality and civic equality. In other words, any discretionary power which affords an opportunity for the executive to take different decisions in individual matters even under uniform legal conditions, would in fact be conflicting with the conditions of socialist equality of rights, and therefore the socialist state will have to resist such tendencies. Consequently socialist law from the very outset tries to define the general rules applying to social relations in such a manner — writes Imre Szabó — that individual circumstances and possible differences should find expression already in the rule of law. This means on the one hand the consideration of the principle of harmony between universal and individual interests. On the other hand, it expresses the endeavour of socialist law of promoting equality in a higher degree. This tendency of socialist law is not identical with a casuist legal regulation. Equality may be guaranteed exactly by that socialist legislation relies on the profound analysis of social conditions.⁴¹

Whenever the socialist constitutions decree the equality of rights of all citizens, irrespective of their nationality, race, sex, religion, etc., further in all spheres of economic, political, cultural, social, and public life, *it is to lay down the equality of the fundamental political, economic, and cultural rights*. However, within these they do not put up barriers to the prevalence of differences due to the actual conditions and faculties of the citizens otherwise enjoying equal rights.

However, the principle of socialist equality does not only mean the equality of rights of all citizens in this sense, but also the *equality of their fundamental duties*. Engels, in his critical comments to the social democratic party programme, (1891) writes: "Instead of the words for *the equal rights of all* I propose for *the equal rights and equal duties of all*, etc. Equal duties supplement the bourgeois democratic equal rights, and this supplementation is particularly important for us, because it deprives the latter of their specific bourgeois sense."⁴²

The supplementation of civic equality with the equality of duties is an indication of the close association of rights and duties. It is the evidence of that rights and

⁴⁰ Marx—Engels, Selected Works, Vol. II. (Hung. ed.), Budapest, 1949, p. 107.

⁴¹ Szabó, I., A szocialista jog (Socialist law), Budapest, 1963, pp 123—124.

⁴² Marx—Engels, Works (Russian ed.), Moscow, Part II, p. 107.

duties, in their unity and organic interrelation only, constitute the legal status of the citizens. If, side by side with civic equality, the load of duties were shifted to some, while others would be exempted from civic duties, this would deprive the equality of rights of its content and sense altogether.⁴³ In the socialist sense the equality of rights means that the same legal regulations are valid for all members of the society, and that no member of the society enjoys special privileges, nor are special duties imposed on any of them. All members of the society may make use of the rights safeguarded by law, irrespective of differences of sex, religion, etc., and none of these differences may entitle a person to evade any of his civic duties.

Under socialism the *unity* of rights and duties creates *the equality* of rights and duties of all citizens. This finds its expression in the provisions of the socialist constitutions, which as an obligation equally imposed on all citizens decree the obligation to work. They declare that all citizens are equally bound to respect the rules of social coexistence, meet their responsibilities to the society, protect and strengthen socialist property and fulfil all duties imposed by the defence of the country.

The gradual construction of the socialist social and economic system is inseparably associated with the enforcement of the following fundamental requirements: the means of production are in the ownership of socialist society, the members of the society are workers throughout, and their relationship to the means of production is equal. Equal rights of men and women and the emancipation of the nationalities have become realities. However, under the conditions of socialist society the complete equality of the members of society cannot yet be carried into effect. This complete equality would presuppose the abolition of differences between town and the country, labour and peasantry, physical and intellectual workers. Such an equality of the members of society may become a reality at a still higher stage of social evolution, i.e. in the period of transition from Socialism completed to Communism, and this equality will be realized in the relation of the members of society to means of production, the distribution of the products according to needs, and in the historical process when work will have become one of the prime necessities of a healthy organism.⁴⁴ However, this equality will not anymore manifest itself in the equality of rights and duties but in a completely harmonic unity of interests of person and society, in the satisfaction of the sound and reasonable needs of a versatile, highly developed man. This equality of a high degree must be prepared by the development of the socialist society establishing the equality of rights and duties of the citizens, and the many-sided evolution of socialist democracy.

⁴³ Yampolskaya, L. C. A., On the Substantive Rights of the Soviet Citizens and the Safeguards of the Substantive Rights. (In a collection of studies on questions of Soviet constitutional law.) (Hung. ed.), Budapest, 1952, p. 160.

⁴⁴ Cf. Marx—Engels, Selected Works, Vol. II. (Hung. ed.), Budapest, 1949, pp 17—18.

6. PROBLEMS OF THE REGULATION OF CIVIC EQUALITY IN SOCIALIST CONSTITUTIONS

In the socialist states civic equality is the expression of the legal position of the citizens in a concentrated form. Civic equality in the socialist acceptance of the term is not merely an item in the catalogue of fundamental rights and duties, but the underlying principle of the legal status of all citizens extending to all fundamental rights and duties, and an essential element of all. Owing to its fundamental character civic equality has become a primordial requirement of the definition of the legal position of the citizens. This must serve as the basis in the relations between a citizen and another; state and society, and their organs. In recent socialist jurisprudence some of the writers engaged in the systematization and classification of civic rights and duties have pointed out that the constitutional rights and duties of the citizens rely on general principles getting richer together with social evolution. Among these the principle of the equality of fundamental rights and duties of the citizens occupies a prominent position, and this principle manifests itself in all spheres of political, economic, or social life.⁴⁵ The realization of civic equality is an inseparable condition of socialist democracy, too.

It is therefore justified to put the blame of legal formalism on a large portion of legal writers dealing with the problems of socialist civic equality. For these writers classify the constitutional regulation of civic equality pigeonholing them either to fit the civic rights or the civic duties, and so equality loses much of its content and significance. Some of the writers on law point out though that the chapters of the socialist constitutions dealing with civic rights and duties do not merely define the rights and duties of the citizens, but also the underlying principles of their legal status. If therefore the equality of rights and duties of the citizens is not some specific law, but exclusively the underlying principle of their legal status, then there is no theoretical justification — these writers say — to include equality of the civic rights either within the framework of an independent legal branch, or take it up within the social-political class of laws, as has in general been approved by socialist jurisprudence, etc.⁴⁶

In fact, the problem of the constitutional regulation of civic equality is somewhat more involved, and necessitates the investigation of further implications. Earlier it has been postulated that the principle of equality of rights and duties, and the rights relating to civic equality, form an organic unity with the fundamental

⁴⁵ See *Lepeshkin*, *Kurs sovetskogo gosudarstvennogo prava* (Manual of Soviet constitutional law), Vol. I, Moscow, p. 489; *Spasov*, V. and *Angelov*, A., *Gosudarstvennoe pravo Bolgarskoy Narodnoy Respubliki* (Constitutional law of the Bulgarian People's Republic), Moscow, 1962, pp. 510—516; *Bartuvka*, *Gosudarstvennoe pravo Checkhoslovakii* (Czechoslovakian constitutional law), Moscow, 1956, p. 408; *Burda*, A. and *Klimowiecki* R., *Prawo Pan'stwowe* (Polish constitutional law) Warsaw, 1958, p. 519; *Voyevodyn*, L. D., *Teoreticheskie voprosy yuridicheskogo polozhenia lichnosti v vsenarodnom gosudarstve* (Theoretical problems of the legal position of personality in the All-National State), *Sovetskoye Gosudarstvo i Pravo*, 1963, No. 2, p. 17.

⁴⁶ Cf. *Voyevodyn*, *op. cit.*

rights and duties of the citizen. At the same time they are closely attached also to the principles of the construction of the socialist system of society. It is to this essential interrelation (not sufficiently studied in socialist legal literature) to which István Kovács calls attention when emphasizing that "in many cases not only the safeguards of the rights (i.e. civic rights) are intertwined with rules expressing the social order, but even a fundamental institution of the social order, or a facet of it, may directly loom up as a civic right".⁴⁷

Granted these relations and ties of the content elements, now the problems associated with the constitutional regulation of civic equality may be approached in a theoretically well founded manner. That is, the principle of civic equality manifests itself *also among the fundamental principles of the social order*, and at the same time organically *attaches to the fundamental civic rights and duties*, and their safeguards, and occupies a prominent position *also within the constitutional regulation of civic rights and duties*. Incidentally in the historical evolution of the constitutional regulation of civic equality tendencies of this nature are clearly distinguishable. Works published on civic rights often failed to draw the obvious conclusions from this evolution, and confined themselves to a study of the rights enumerated in the relevant chapters of the constitution.

The first Soviet socialist constitutions and those of the people's democracies defined the principle of civic equality in accordance with the conditions and requirements of the period of transition, and with respect to the class character of the particular countries. With the gradual fading away of the social contradictions, the content of civic equality has become richer, the recognition of its significance has become more emphatic, and accordingly the system of its political, economic, social, etc. safeguards has also expanded. All this finds expression in the evolution of the constitutional regulation of civic equality.

Consequently recent socialist constitutions define civic equality, and its relations to civic rights and duties in a more differentiated manner, and in conformity with the results achieved in development, and the new requirements. In the Vietnamese Constitution of 1959 the provisions on civic equality constitute the introductory articles of civic rights (Articles 22 to 24). In the provisions of the new Mongolian Constitution approved in 1960 in like way civic equality occupies a prominent position among the provisions on fundamental civic rights (Article 76). In Chapter I on the social system, the 1960 Constitution of the Czechoslovak Socialist Republic e.g. pronounces the principle of equality of the two nations, i.e. Czechs and Slovaks, constituting the state (Article 1, paragraph 2). At the same time Chapter II on civic rights and duties decrees the principal requirements of civic equality, viz. the equal rights and duties of all citizens (paragraph 1, Article 19); equality irrespective of nationality or race (paragraph 2); legal equality of men and women in the family, in work and social activities (paragraph 3). The constitution emphasizes that the society of the working classes guarantees

⁴⁷ Kovács, I., *A szocialista alkotmányfejlődés új elemei* (New elements of socialist constitutional evolution). Budapest, 1962, p. 241.

civic equality in all spheres of social life by providing equal possibilities and opportunities (paragraph 4). In the interest of ethnical equality the constitution specially declares that the State guarantees education and cultural development in their respective vernaculars to the Hungarian, Ukrainian, and Polish minorities, and provides the means to this end (Article 25). Similarly, the constitution includes special provisions on the safeguards of the women's emancipation. Accordingly, women enjoy an equal status with men in the family and at work, in public life, and by special conditions of the labour contract: specific health facilities have been introduced for the protection of expectant mothers and maternity. The system of institutions and services helping women to display their faculties in social life have been extended (Articles 26 and 27). The principles in the Preamble to the Constitution of 1963 of the Yugoslav Socialist Federal People's Republic declare that the socialist system of Yugoslavia relies on the equality of relations between men, between free and equal producers of goods, and creative men. It specially emphasizes the unity and equality of the rights, duties, and responsibilities of all workers as the inviolable basis of the position and role of all men. The introductory section of the chapter on the fundamental freedoms, rights, and duties of man and citizen emphasizes that freedoms and rights come to fruition in the mutual solidarity of men and in that everyone does his duty alike towards the community and vice versa (Article 32). In the following sections the constitution declares that the citizens have equal rights and duties irrespective of nationality, race, religion, sex, language, erudition, or social position; before the law all citizens are equal (Article 33). Special provisions define the safeguards of the equal rights of ethnical groups (Article 43), and those attaching to the enforcement of equal rights for women; the special protection of women and children (Article 57).

The evolution of the legal regulation of civic equality in the constitutions of several socialist states shows tendencies to establish a close relationship between the equality and the other fundamental rights and duties. So in association with the right to work the new Yugoslav constitution specially declares that each citizen shall have access to any employment or social function on equal terms (Article 38, paragraph 4). The constitution of the People's Republic of China, in connection with equal rights in political life, emphasizes the equal franchise of women (Article 86). Similar provisions have been taken up in the new Vietnamese constitution of 1959 (Article 23). Among the safeguards of enforcement of the equality of women, ethnical or racial groups, etc. several constitutions specially declare that any violation of equal rights, or the limitations of rights on grounds of nationality, sex, or religion, or fomenting hatred and dissension are unconstitutional and indictable offences.

The evolution described above is also indicative of the novel requirements arising in connection with the constitutional regulation of equality. As may be seen from the recent constitutions of the socialist countries, these requirements are not restricted merely to the indication of the quantitative increase of rights and safeguards, but at the same time urge the expression of qualitative changes associated with social evolution in the constitutions. In the Hungarian Constitu-

tion of 1949 the constitutional definition of equality of course reflects the social-political and economic conditions at that time, and here the legal forms developed and approved until then are applied. It is beyond doubt that a subsequent constitutional regulation will have to reflect the successes achieved in building up a socialist society, and incorporate the ample experiences gathered in the course of the socialist evolution of law.

In the light of what has been set forth so far the principal traits of a constitutional definition of civic equality may perhaps be summed up as follows. First of all the necessity arises of a *manifestation of the principle of civic equality within the framework of the principles of the people's democratic order of society*. The fundamental characteristic of the latter order of society is that with the liquidation of the former exploiting classes class oppression has ceased to be justified, the social basis of socialist democracy has expanded, and democracy of the majority has developed to a democracy of the whole people. Earlier social limitations have disappeared, and civic rights and duties uniformly extend to all. This is a highly significant characteristic. At the same time it is justified and even necessary to declare in the chapter on civic rights and duties that the same rights are the due of, and the same duties are imposed on, the citizens irrespective of nationality, sex, race, social position, etc., in all spheres of economic, cultural, social, and political life; further that all citizens are equal before the law. In view of the close organic association of the principle of civic equality with the social order, its bearing on the legal status of the citizens, and its relation to all fundamental rights and duties, it appears to be justified to include these general, fundamental provisions in the introductory sections of the constitution.

Recent socialist literature is divided as far as the definition and classification of the sphere of civic rights and duties, and the systematization of rights securing civic equality are concerned. In general, socialist writers on law deal with the problem of equality in the sequential order as laid down in the constitution. Hungarian jurisprudence, following the system of Chapter VIII of the Hungarian Constitution of 1949, assigns the fundamental economic, social, and cultural rights to the first group, and discusses the problem of civic equality in the second. A similar system has been adopted by A. I. Lepeshkin, in his work published in 1961. On the other hand several Soviet, Polish and Bulgarian writers on constitutional law depart from this classification. They deal with civic equality as the first group of civic rights and duties, emphasizing thereby the comprehensive character of civic equality, extending over the sum total of fundamental civic rights and duties.⁴⁸ As may be inferred from the above, the writer of this paper considers the latter classification more convincing for reasons of theory, and also the evolution of socialist constitutions seems to confirm this opinion.

⁴⁸ See *Beér, Kovács and Szamel*, Magyar Államjog (Hungarian Constitutional Law), p. 445; *Lepeshkin*, op. cit. (Manual of Soviet Constitutional Law), Moscow, 1961, p. 506; *Voyevodyin, L. D., Zlatopolsky, D. L. and Kuprits, N. I.*, Gosudarstvennoye pravo stran narodnoy demokratii (Constitutional Law of the People's Democracies), Moscow, pp 142—154; *Ilinskiy, I. P. and Shetinyin, B. V.*, Gosudarstvennoye pravo stran narodnoy demokratii (Constitutional Law of the People's Democracies), Moscow, 1964, p. 203.

Nor is it doubted that the group of rights and safeguards of civic equality is also subject to variations. It changes in both character and content. For example, attention is focussed to rights and guarantees of the emancipation of women, and the equality of the nationalities.

Socialist constitutions without exception decree the principle of equal rights of men and women, and the women's emancipation in all spheres of economic, political, cultural, and social activities. The constitutions declare that women have freedom in their choice of a profession or occupation, participate in education, or the acquisition of special training for certain professions on an equal footing with men, etc. The various constitutions do not only declare the equal rights of men and women, but at the same time lay down the principal safeguards essential for the enforcement of emancipation. Here first of all the right to work and employment, equal pay for equal work, the statutory protection of mothers and children, support of large families of solitary mothers from budgetary means, pre- and post-natal maternity leave, development of the system of hospitals, day-nurseries, day-homes, public catering and public utilities, etc. have to be mentioned.

Undoubtedly, for the practical implementation of emancipation even in the socialist countries many of the antiquated traditions and prejudices of the past, surviving in respect of the employment or social functions of women, have to be ousted. There is still a certain contradiction in the equality of men and women when it comes to productive, cultural, social, or political activities. Nor is there true equality in domestic work. The care of attending children has remained almost exclusively the burden of women. All these circumstances and functions still prevent women from accepting a larger share in the life of society, although this would be an indispensable condition of social development. Thus, the practical implementation of women's equality requires not only provisions in the constitution but also all-important social measures.

It follows further from the principle of civic equality that, as for rights and duties, ethnical or national groups are in every respect equal to all other citizens. The constitutions of countries with multi-ethnical groups (the Soviet Union, China, Czechoslovakia, Rumania, Yugoslavia) safeguard the enforcement of national equality in the government structure itself. Among the guarantees of the equal rights of ethnical groups, the constitutions in general decree the free use of language, the right to training in the language spoken by the group, budgetary subsidies for fostering the national cultures, and the respect for ethnical customs and traditions.

The rights of women and of ethnical groups are protected in the socialist constitutions by special sanctions under criminal law. The constitutions hold out punishments for the obstruction of the equality of women in whatever form, and declare fomenting hatred or intolerance on ethnical or racial grounds, or discrimination for the same reasons, an indictable offence. These provisions of the constitutions are then transplanted to the criminal codes in a more detailed form.

By the side of the two above-mentioned principal spheres of civic equality, in recent socialist constitutions equality finds expression *even within the particular groups of law* (economic-social, or cultural laws). For example, the Czechoslovak constitution of 1960 declares that the State shall ensure the enforcement of the fundamental rights by holding out equal opportunities to all citizens. All this indicates that the *enforcement of equality in all spheres is an important condition* of the true guarantee of fundamental civic rights; it is the primary requirement of the evolution of personality. A consistent enforcement of the principle of civic equality, and the manysided governmental protection of this equality, are the most essential basic principles of a socialist society.

The fundamental guarantees of the prevalence of civic equality, and their evolution, under the socialist system, have not rendered superfluous the improvement of *the specific legal forms or safeguards*; on the contrary, these are needed to an even greater extent. On the other hand, the detailed elaboration of the legal, in particular constitutional guarantees, will serve more effectively the enforcement of civic equality, also allowing an extensive exploration of *the socialist content* of fundamental civic rights. Socialist jurisprudence dealing with these problems, unlike the practice of earlier years, when stress was laid almost exclusively on the economic guarantees of equality, has embarked on a study of the present new, changed sense of equality and the problems and conditions of the legal organizational and institutional evolution of its enforcement, from a different approach and with greater thoroughness.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN BOURGEOIS CONSTITUTIONS AND JURISPRUDENCE

Social, economic and cultural rights have been laid down in all socialist constitutions without exception. It is held in socialist jurisprudence that this category of citizens' rights is important not only because it covers the fundamental rights but also for the reason because these constitute guarantees for the actual implementation of the other rights of citizens.

There are different views in bourgeois jurisprudence as to the functions and nature of these rights. For a long time — in conformity with the then dominating liberalistic views on law — economic and social rights were considered as falling outside the group of the "traditional" rights of liberty and equality, and remained thus outside the scope of bourgeois jurisprudence. After the First World War this view underwent a gradual change and these rights were adopted in bourgeois jurisprudence as a type of citizens' rights. Several bourgeois jurists have admitted the basic import of these rights by now. The reasons underlying this changed attitude are rooted in the economic and historical changes brought about in the structure of bourgeois society.

The struggle of the bourgeois class against the feudal system of society had been started by demanding the elimination of restrictions imposed by the latter. In this way, all demands voiced by the bourgeois class for establishing a formal equality of rights and for doing away with restrictions impeding the consolidation of its political power and economic growth assumed a political character, and all citizens' or human rights were presented as coming under the category of equality or liberty. The bourgeois class, after it had seized political power, laid down in the first constitutions as freedoms also rights of an economic, social or cultural content. It was in this shape that the rights of education and teaching, the freedom of sciences and arts, the choice of trade or profession, the freedom of charity, etc. were proclaimed. At that period, until after the years following the outbreak of the First World War bourgeois jurisprudence did not show signs of intending to expand the scope or amending the content of these rights. Its positivist concept was not shaken even by political movements demanding changes to this effect, and it was reluctant to look beyond the rights as laid down in the constitutions in the traditional way. Though encouragements to this effect were not lacking during that period, emanating either from the workers' movements or Christian Socialist movements.

The objectives pursued by movements of various political content and tendencies found expression in a part of bourgeois constitutions adopted after the First World War. There were such rights laid down in the Mexican, the German (Weimar)

and the revolutionary Spanish constitutions and later, due to this impact, in several Latin-American and Central-European constitutions which had been lacking in previous constitutions.¹ The protection of the family, matrimony, as the basic organisms of society, the introduction of wage and labour conditions regulation, public health system, social insurance as the prerequisites of establishing living conditions worthy of man were enacted as constitutional provisions for the first time. The augmenting of the scope of rights resulted also in changes in the manner of their regulation. The way, namely, in which the freedoms were formulated in constitutions proved to be unsuitable for a part of the socio-economic rights. To introduce e.g. "the freedom of family protection" would be entirely senseless. The objective followed in respect of these rights was not the emphasis on freedom but, on the contrary, on the duties of states to establish a socio-economic system which provides living conditions worthy of man. Accordingly, a part of these articles cannot be considered as civic rights in the strict meaning of the term but much more as provisions defining the state's economic and social policy and the duties incumbent upon the state in implementing such objectives. This is the reason why these constitutions contain the so-called traditional rights, and the socio-economic rights in separate chapters, the latter being entitled usually as "the economic and social order".

It was after the constitutional enactment of economic and social rights that the nature of these rights has become the object of a more thoroughgoing scrutiny in bourgeois jurisprudence.

Starting from the above characteristic of the constitutional regulation (the separation between the so-called traditional rights and the socio-economic rights) and from the fact that the provisions of the latter contained economic and social *objectives* also, the *legal* nature of economic and social rights was generally denied. Several bourgeois jurists adopted the view that the latter category of rights constituted but provisions on the protection of interests, as against the "traditional rights", which do not impose upon the state an obligation to act but merely mean "positions securing objective protection".² This view characterizes the majority opinion of bourgeois jurists in their attempts of systematization. The larger section of bourgeois writers, disregarding the fact that economic and social rights had been laid down in several bourgeois constitutions after the First World War, list these rights, conceived of as early as in the 19th century among the rights of equality and liberty. This can be explained among other things, by the outlook of many bourgeois jurists who draw up a system of citizens' rights relying solely on the constitutions of their respective countries, leaving out of consideration the major trends of the evolution of citizens' rights. It is due to this reason that under

¹ Such are the Serbian, Polish, Rumanian constitutions adopted after the First World War, as well as the 1925 Chilean, the 1933 Peruvian, the 1940 Paraguayan constitutions.

² Cf. Szabó, I., *Az emberi jogok mai értelme* (Modern concept of human rights). Budapest, 1948, p. 134 et seq.

the impact of the Weimar constitution — abounding in social rights — there were at least attempts made during the inter-war period in the German-Austrian jurisprudence to define the nature of these rights. The reason likewise explains why so few words were said on these rights in English and French legal writings.³

The inclusion of economic, social and cultural rights in constitutions has become a general practice of bourgeois states only after the Second World War. The lessons drawn from the events preceding the outbreak of the war, the growing demands expressed by the working masses, who had suffered the most, for securing a life free from want and fear, the increased strength of the revolutionary working-class movement, the 1936 Soviet constitution as a model, were so many factors leading to the necessity of regulating economic, social and cultural rights on an international scale.⁴

Government activity in bourgeois states expands after the Second World War not only as regards its volume but undergoes changes also as to its substance; this process might be termed as the transition from individual monopolistic relationships into state monopolistic ones.⁵ Although this process had started already at an earlier date, subsequently gaining momentum due to the devastating effects of the production crises during the inter-war period, it has not become dominant until the end of the Second World War. The expanding directive role of governments in bourgeois states is marked, in the economic, social and cultural sphere, by the increasing number of nationalization measures, of actions taken in order to introduce some kind of planning into production activity, etc. The changed role of the bourgeois state regarding the control over economy has had, as a matter of course, an impact upon the system and content of constitutions, on the trends affecting the catalogue and nature of citizens' rights.

The economic, social and cultural rights have been laid down on the widest scope in those constitutions the preparation of which has been directly influenced by communist and workers' parties. Chronologically these constitutions were adopted in the years immediately after the end of the war when working-class movement was in the upsurge all over the world and democratic — and to a certain degree socialist — demands were echoed by wide strata of the population. This group includes the French (1946), Brazilian (1946), the Italian and Japanese (1947) constitutions. The preparation of these constitutions had much to thank, through the intermediary role of the working-class movements, to the 1936 Soviet constitution, further to those international instruments and draft declarations

³ *Esmein-Néard*, *Éléments de droit constitutionnel*. Paris, 1927, pp 583—585., *Hauriou*, *M.*, *Précis de droit constitutionnel*. Paris, 1929, p. 247 et seq. *Moreau*, *F.*, *Élémentaire de droit constitutionnel*. Paris, 1928.

⁴ In the UN-Charter adopted in 1945 the requirement of regulating economic and social rights is raised from the aspect of deepening peaceful and friendly relations between nations.

⁵ Cf. *Csapó*, *L.*, *Az állami monopolkapitalizmus* (State monopoly capitalism). Budapest, 1962. pp 309 et seq.

which were released during or immediately after the Second World War by various international bodies. This group of constitutions goes beyond the most progressive of such bourgeois documents adopted between the wars and adds new social and economic rights previously unknown for bourgeois constitutions to the range of citizens' rights. Thus, e.g. provisions on the right to work are found in the French, Italian, Japanese, Brazilian constitutions and the right to education in the French, Italian and Japanese constitutions.

The second type of bourgeois constitutions comprises those which have been enacted in the early 'fifties, at a time when working-class forces were in the state of a relative repression. The main objectives sought to be attained by these constitutions were: formal legality, elimination of the obstacles in the way of free competition, and establishing a balance between the various types of state agencies. In keeping with these objectives the system of citizens' rights is dominated by the so-called traditional rights, while the social and economic rights were laid down in the form of freedoms. The Danish constitution of 1953 and the 1949 constitution of the German Federal Republic belong to this group. These basic laws — similar to the constitutions adopted prior to the First World War — contain but scanty provisions on economic and social rights. In addition to the freedom of ownership, of the choice of trade or profession, the government support of the indigent, the statutory protection of matrimony and family, and as rights of cultural nature, the rights to education, the freedom of arts and sciences are provided for in these constitutions.

Within the third category of bourgeois constitutions enacted after the Second World War come those instruments which have come into being after the suppression of bourgeois-democratic or socialist revolutions. The best-known specimens of this group are the 1956 Guatemalan, the 1951 Uruguayan constitutions and the 1945 edict on the re-statement of the 1938 "Charter of Labour" in Spain. In such constitutions efforts were made to counteract the effects of revolutionary social movements through formally proclaiming a wide range of basic economic and social rights demanded by the working strata of the population. It is the Spanish edict which goes farthest in this respect which includes economic, social and cultural rights ranging from the right to work to the accommodation of students in hostels. The other two constitutions referred to are somewhat more reserved, the right to work is e.g. not proclaimed in these, but they still cover a wide range of rights.

Lastly a specific group of constitutions enacted after the Second World War is made up of those adopted by countries which have become free and independent from colonial oppression. The capitalist pattern of social and state structure was rejected by the countries emerging from colonial dependence and anti-imperialist in their majority. These states consider as the most urgent tasks to be coped with, the creation of modern industry, the improving of public health, of the social and cultural conditions of the population. These objectives are reflected in the respective constitutions. A limited private ownership is placed under protection, cooperative production and small-scale industry is accorded support, the economic,

cultural and social rights of the population are regulated within a wide scope.⁶

The widening practice of drawing economic, social and cultural rights under regulation has wrought very significant changes in the attitude of bourgeois jurists concerning these rights. Of course, no unanimous view has been adopted. No uniform *term* is even used to denote these rights and no unanimous conclusion has been arrived at as to which rights should be considered as falling under the category of social, economic and cultural rights. The term "social rights" is more wide-spread⁷ but these are not infrequently called also as "economic-social rights".⁸ The rights covered by this category are sometimes summed up under the heading "economic and social system"⁹ or "economic relationships".¹⁰ It has been aptly pointed out by several writers that this hesitation, and confusion, in terminology is rooted in the neglect in bourgeois jurisprudence to pay adequate attention to the nature of these rights; the majority of writers approaching the issue list without appropriate scientific analysis the rights assumed by them to form part of this group.¹¹

As to deciding the *nature* of the rights now discussed bourgeois jurists may be divided into two groups. According to the one view the substance of these rights lies in their providing opportunities for all citizens to avail themselves of the other rights. This means, in other words, a primacy of these rights over the other ones.¹² It is held by the adherents of the other, dominant, view that these

⁶ In the Indonesian constitution of 1945 e.g. a provision is found on the nationalization of industries important for the life of state and people. Although with a declaratory character, the rights to work, education and assistance are also laid down.

⁷ This term is used by *Mirkine-Guetzévitch* (*L'État des droits de l'homme, Notes et réflexions; "Scritti di sociologia e politica in onore di Luigi Sturzo."* Vol. II. 1955. p. 557). *Brepohl*, W., *Die sozialen Menschenrechte*, Wiesbaden, no year.

⁸ *Burdeau*, G., *Manuel de droit public et les libertés publiques, les droits sociaux*. Paris, 1948; *Duverger*, *Droit constitutionnel et institutions politiques*. Paris, 1956; *Kündig*, Th., *Les droits constitutionnels en Suisse. Essais sur les droits de l'homme en Europe*. 1959. Torino, pp 67–87.

⁹ *Maunz*, Th., *Deutsches Staatsrecht*. München—Berlin, 1958.

¹⁰ *Tramontana*, D., *Diritto pubblico*. Milano, 1958.

¹¹ *Staszków*, M., *Quelques remarques sur les "Droits économiques et sociaux"*. Essais sur les droits de l'homme en Europe, 1961. Vol. III. pp 45–46.

¹² According to *Mirkine-Guetzévitch*, the term 'social rights' comprises: the right to family and child protection, equality of sexes, to social insurance, the right to education and work, trade-union rights, the rights to healthy living, rest, the economic safeguards granted to the working classes and the limitations upon the right of ownership. (See: *Mirkine-Guetzévitch*: op. cit. p. 557.) *Gurvitch* suggests that the draft declaration on social rights contain the following divisions: the social rights of producers, consumers and of man. In this grouping the rights of producers are the right to work, trade-union freedom and the right to strike. The rights of consumers are: a living worthy of man, the right to a share in the national income, the right to social insurance, the right to a firmly established national economy free from risks and fear and automatically guaranteed. The rights of man are: the right to life, equality of sexes, education, immigration and emigration, the free choice of joining and leaving any economic, political or cultural association. The social rights and duties connected with ownership are mentioned as a distinct category. (See: *Gurvitch*, G., *La déclaration des droits sociaux*, Paris, 1946. pp 85–87.)

rights are important because it is these which secure democratic practices in the economic field.

The fundamental *safeguard* of the implementation of citizens' rights must be looked for in the political and economic system of the given society. Compared with these, a very significant but still a secondary place is occupied by those legal guarantees, determined and moulded by the former, which provide a protection against the infringements of citizens' rights. Socialist jurisprudence, relying on this correct theoretical basis, analyzes the problems bearing on the legal safeguards of citizens' rights; a particular emphasis is laid in socialist jurisprudence on the close interdependence of economic-social rights on the one hand and the level of economic development, the political system of society on the other. Bourgeois jurisprudence, however, stresses the importance of the legal and organizational guarantees, and scarcely makes efforts to reveal the relationship between the politico-economic system and social, economic rights. The picture would not be complete if the exceptions to this general statement were not touched upon. It has e.g. been concluded on the ground of a very thorough-going analysis by M. Staszków that the implementation of the right to work runs counter to the very foundations of bourgeois society. Discussing the economic and social rights he comes to the conclusion: "In the times after the First World War the rights remained merely on paper and had only an educational value. After the Second World War their plight became almost the same."¹³ The exceptional nature of such statements must repeatedly be pointed out. Bourgeois jurisprudence starts mostly from the assumption that bourgeois political and economic system is both capable and willing to implement every one of these rights and — it is suggested — the incomplete implementation thereof is caused by the absence of adequate legal guarantees. Gurvitch, when giving voice to this dissatisfaction over the regulation of these rights under which the individual concerned becomes a passive

Burdeau makes the following division: the subdivision "the position of the workers" should contain the freedom of work, the right to work; the sub-division "economic rights" should include the right of ownership and the freedom of practising trade and industry.

According to Tramontana, the category of economic conditions covers the obligations incumbent upon the state in respect of the production and distribution of commodities, particularly in the field of fixing working conditions, requirements and wages.

Maunz holds that the system of economic and social rights includes the freedom of association, freedom of movement, the free choice of trade and employment and the right of ownership.

According to Brepohl, all rights, irrespective of their content, which bear upon the position of the individual within social groups, i.e. the so-called group-rights (freedom of assembly, association, trading) constitute the category of social rights. (*Brepohl*, W., op. cit. p. 10.)

Colliard mentions among the freedoms of economic and social life the right to work, trade-union freedom, the right to strike, the right of ownership, the freedom of trade and industry. (*Colliard*, C. A., *Précis de droit public*. Paris, 1950.) Adamovich retains the system expounded by him thirty years ago unchanged in his book published in 1957. (*Adamovich*, L., *Handbuch des österreichischen Verfassungsrechts*. Wien, 1957.)

¹³ *Staszków*: op. cit. pp 47—48.

recipient and not an active holder of such rights, refers to the lack of legal safeguards which would be required for protecting complete liberty.¹⁴ Burdeau also suggests that social rights be adequately safeguarded through the introduction of legal and organizational guarantees.¹⁵ The emphasis on special legal guarantees is not devoid of some, rather mild, criticism. In bourgeois constitutions namely the wording of economic and social rights is rather nebulous and the Bills introduced for the execution of such constitutional provisions have been rejected several times. This state of affairs has given rise to the theory holding that constitutions contain both obligatory provisions and non-obligatory statements. The latter are rules in the nature of a program and the socio-economic rights must be included within that category.¹⁶ Having that in mind the demand for elaborate legal safeguards might eventually be directed against reducing the rights under discussion to mere propaganda slogans. The majority of bourgeois jurists hold the principles laid down in the constitutions — among these the prohibition of the violation of the individuals' rights, the preclusion of the amending of the content thereof, the available judicial recourse and right of complaint in case these have been infringed, — without a profound critical analysis as sufficient safeguards of the actual implementation of economic and social rights.¹⁷

2. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE SOCIALIST CONSTITUTIONS

Under the science of Marxism-Leninism the purpose of building up the socialist system of society is to satisfy to the maximum extent the economic, social and cultural needs of the population.¹⁸ The vanguard theory of the working-class advocated, from the outset, the satisfaction of the economic demands of the working classes, fully aware of their import, but it has never ceased to emphasize that the full emancipation of the proletariat cannot be carried out unless the power of capital has been overthrown and the basic means of production have become social property.

After the victory of the proletarian revolution in Russia the possibility was opened up to carry out socialist ideas in practice. As a result of the Decree issued by the Second All-Russia Congress of Soviets on land, the decrees issued by the Central Executive Committee and the Council of People's Commissars on the eight-hours working day, on health insurance etc., the scope of the foundations of economic and social rights had begun to take shape as early as in the first months of the power of the Soviets. (The Code of Labour adopted in 1918 is particularly important in this context.)

¹⁴ Cf. *Gurvitch*, op. cit. p. 36.

¹⁵ *Burdeau*, op. cit. p. 292.

¹⁶ *Staszków*, op. cit. p. 50.

¹⁷ Cf. e.g. *Schlochauer*, H. J., *Öffentliches Recht*. Karlsruhe, 1957. *Maunz*, Th., op. cit. etc.

¹⁸ See: The Program of the Communist Party of the Soviet Union. The XXIInd Congress of the CPSU. 1962, p. 721 (in Hung.).

The above fact notwithstanding the constitution adopted by the Russian Federal Soviet Socialist Republic in 1918 contained hardly any of the economic, social and cultural rights. No attempts are made in it to codify the rights laid down in the above decrees; altogether the principle of "he who will not work shall not eat" and related to it the general obligation of labour and the right to education were included in it. The constitution regulates the relation of the individual to labour from the side of the obligation of labour which was an obvious consequence of the then prevailing conditions.

In the new Soviet-Russian constitution, the issue of economic rights was approached from a new, substantive angle. In Chapter I of the constitution the political power of the working-class, the socialization of the means of production, the introduction of workers' control over factories, railways, all these amounting to the elimination of all kinds of exploitation, were laid down providing thereby the basic *political and economic* guarantees of the rights now discussed. This concept meant a completely new idea as compared to the traditional bourgeois concept and the corresponding constitutional regulation under which the safeguards of the citizens' basic rights were not considered to be of importance or narrowed down to procedural or other legal means.

In the constitution of the *Hungarian Republic of Councils*, 1919 the leading principles of the economic structure were likewise included among the provisions on the rights and duties of working individuals. Besides, as an advance upon the process started with the first socialist constitution, the basic economic and social rights were listed (even if not as exhaustively and distinctly as was done in subsequent socialist constitutions), after the provisions defining the bases of the economic system. Through proclaiming the right to work, the basic type of the most important economic rights, through laying down the state's obligation to support the disabled, the basic type of the social rights, through introducing and securing gratuitous elementary education, the basic type of the cultural rights were defined in this constitution. Going beyond the proclaiming of these rights there are references in this constitution, to their actual safeguards. The right to work was to be safeguarded and implemented through the government support accorded to the disabled and unemployed, the right to education was to be guaranteed through the introduction of free education.

The bases of the socialist society had been laid down in the Soviet Union by 1936. The constitution which reflected this historical event is of an essential feature for the subject treated in this paper in that it makes a separation between the provisions defining the economic system and those laying down the citizens' rights and duties. In the first Chapter, bearing the title "The Social System" are laid down the relevant major achievements of the socialist revolution, the fundamental feature of the Soviet state's economic, social and cultural policy. This separation has had a determining effect on the mode of regulating economic, social and cultural rights. The trend of bourgeois constitutional evolution during the inter-war period shows that, starting with the Mexican and German (Weimar) constitutions, the rights now analyzed were laid down separately from citizens'

rights and termed mostly not as rights pertaining to citizens but as provisions on the economic and social responsibilities of the state. The solution adopted in the Soviet constitution is of a particular importance because those basic principles which are indispensable in practically implementing social, economic and cultural rights, but which cannot be laid down by their nature among the citizens' rights, were ranged on equal footing with the provisions governing the social system. Besides, the legal titles serving the enjoyment of these rights could be included within the rights of citizens. In the 1936 Soviet constitution — contrary to the practice adopted in bourgeois constitutions — these rights are conceived in a very *deliberate, unequivocal* way as *subjective rights pertaining to citizens*. Through applying this method not a *substantive* but also a *formal* unity is brought about between the political and socio-economic rights. To lay down socio-economic rights in this way required a high level of abstraction with an emphasis on the common and substantial aspects of homogeneous economic, social measures and rights. Thus the single socio-economic rights laid down in the Soviet constitution are *cumulative rights* to which the specific content is lent by the partial rights summed up among the safeguards which follow the wording of the single rights, by government measures, economic, social and political principles. The right to rest e.g. means the right to enjoy resting between two working days, the time off between working hours, annual paid holidays and the material requisites securing these and the appropriate use of leisure.

The consolidating of homogeneous rights in an abstract way and the laying down these as the safeguards of specific rights lead also to some contradictions. The rights to rest, material support, to education pertain namely, as global rights, to the entire population, *all citizens*. On the other hand the specific rights and their safeguards operate within a narrower scope. The rights to an eight-hour working-day, annual paid holidays, social insurance apply only to *workers* and employees (white-collar workers included); and only *working individuals* are entitled to enjoy free medical service and free professional instruction.

It is a particular aspect of the rights comprised within the 1936 Soviet constitution (the rights to work, rest, material support, education, maternity and child protection) that they sum up statutes of economic and social nature previously enacted at a hierarchically lower level, and also attainments then not laid down in statutes but actually achieved. The right to rest had taken shape already prior to 1936, in various partial statutes (the regulation of working hours, the duration of paid annual holidays, the organization of holidays etc.). The rights to education and material support had evolved in a similar way. Although the right to work had not been regulated in legal provisions prior to 1936 (the 1918 constitution provided only for the obligation to work) it is common knowledge that unemployment had come to an end in the years preceding 1936. In fact, the only new *civil right*, in the 1936 constitution was the right to work: the other rights were raised from a hierarchically lower order to the level of constitutional provisions.

The impact exerted by the Soviet constitution on those of bourgeois states was most momentous in the sphere of the rights now analyzed which may

best be ascertained in the constitutions adopted immediately after the Second World War. The effect of the Soviet constitution on those of people's democratic countries has been much stronger and more direct. This effect is discernible already in the 1940 Mongolian constitution but it has been still stronger in the constitutions of people's democratic states emerging after the Second World War. These instruments may be divided, from the aspect of portraying the evolution of economic, social and cultural rights, into three groups.

(a) Within the *first group* come the socialist constitutions adopted in the first stage of the people's democratic transformation.¹⁹ It is characteristic of all these constitutions that they contain economic, social and cultural rights, even to a larger extent than the corresponding sphere in the Soviet constitution but the firm foundations of the socialist economy on which the actual implementation of these rights should be based was lacking at that time. Because of this several economic, social and cultural rights laid down in these constitutions were only of a declaratory nature. (E.g. compulsory elementary schooling is provided for in the 1948 Korean constitution but it could actually be introduced only in 1950. The right to work is laid down in the 1948 Rumanian constitution although unemployment was not fully eliminated before the years 1949—1960.) Still, the majority of economic, social and cultural rights provided for in these constitutions meant practicable opportunities for their enjoyment by all citizens.

The conditions of transition during the first stage of the evolution of people's democratic states are reflected in the catalogue of economic, social and cultural rights as laid down in these constitutions. This phenomenon is most conspicuous in respect of the economic rights. While under the Soviet constitution private ownership and the related rights of succession of citizens was recognized only on and in incomes earned by work, such savings, dwelling-house and household plot, household utensils, articles serving personal needs and comfort which means a strictly limited scope, — under the people's democratic constitutions discussed above *private property* is, as a rule a recognized institution, and so is *succession*. The right of private initiative is also admitted. The 1948 Czechoslovak constitution recognizes, in addition to the above, the right of acquiring real property and of engaging in lucrative activity. It is only the Korean constitution in which the limitations on private property are defined but it is done in such a wide circle that small-scale or medium-sized industrial establishments, trading enterprises are not affected by it. As it is seen no difference is made in the constitutions adopted in the first stage of the popular democratic development between private property and personal property. On the other hand, making use of the achievements of the advancing Soviet system of government and of the provisions of international agreements, the list of economic, social and cultural rights was considerably expanded as compared with the Soviet constitution. As has been

¹⁹ The 1962 Yugoslav, Albanian and Vietnamese, the 1947 Polish, the 1948 Rumanian, Czechoslovak and Korean constitutions.

mentioned, the right to material support is included in the Soviet constitution now discussed this right is likewise laid down but the right to *health protection* is also added as a new civic right. Social rights have also been expanded in another sphere, the field of family, youth and matrimony protection. In all constitutions of the European people's democratic countries these rights are proclaimed in the given period.

The scope of *cultural* rights has equally been augmenting. The right to education as a cultural right is laid down in the Soviet constitution. In the first people's democratic constitutions, in addition to that right, also the freedom of artistic activity and research is proclaimed.

(b) The *second group* of people's democratic constitutions is made up by those which have been adopted after the dictatorship of the proletariat has become triumphant in these countries.²⁰ The effect of the social and political developments progressing from the stage analyzed in the foregoing has, of course, left its mark upon the constitutional regulation of the rights in question.

Parallel with the strengthening of the foundations of socialist economy the practical conditions for implementing social, economic and cultural rights have come into being. All the constitutions falling within this category make references to the changes effected in the economic system. The right to personal property and the succession in it is proclaimed among the tenets on the socio-economic system. (Thus, following the practice adopted in the Soviet constitution the separation of economic rights in various contexts has become a permanent feature.)

Although the scope of these rights has not augmented as compared with those laid down in the constitutions of the preceding stage, the single rights have become more concrete, their content has been undoubtedly enriched. As regards social and cultural rights the evolution amounts almost to a qualitative advance. In the 1949 constitution of the German Democratic Republic a separate chapter is devoted to the rights connected with education and teaching, as well as family and matrimony. In the Polish constitution of 1952 more space is devoted to the rights bearing upon rest, health protection, material support, cultural rights, maternity and child protection than to the other rights of citizens taken together (Articles 58—68). This more detailed regulation in the constitution of the citizens' rights under examination enables, beside the elaboration of the socio-economic safeguards, also the widening analysis of the legal guarantees.

(c) The *Czechoslovak constitution* adopted in 1960 bears out that the foundations of the socialist system of society have already been laid down; a certain similarity with this constitution is found in the Mongolian constitution adopted in the same year. Within this category should be placed the 1963 Yugoslav constitution too. The parts on the foundations of the socio-economic system have been further

²⁰ Within this group may be mentioned the 1949 Hungarian and German, the 1952 Rumanian and Polish, the 1954 Chinese constitutions and, in the main, the 1960 Vietnamese constitution.

expanded in these constitutions. These chapters cover not only the patterns of ownership, the system and purpose of productive activity but also the objectives, tasks and methods of the economic, social, public-health and cultural policy carried on the ground of the unified socialist economic basis. This image involves that several provisions are included within the chapters of the constitutions which have a direct bearing upon the regulation of citizens' rights. This method enabled to place the general social, economic and political tenets, included hitherto among the rights of citizens, within a systematically more appropriate context. To mention only one instance: in the 1960 Czechoslovak constitution the state's policy on sciences and arts is placed within the provisions on the social system. Similar provisions in the earlier adopted Polish, Chinese and Hungarian constitutions are found among those on the rights of citizens. The right to private ownership is not mentioned and consequently not recognized under the 1960 Czechoslovak and Mongolian constitutions; but more effective provisions have been introduced on the protection of personal property.

3. THE SYSTEM OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN SOCIALIST CONSTITUTIONS; THE SAFEGUARDS OF THEIR IMPLEMENTATION

After having reviewed the emergence, evolution of economic, social and cultural rights, in the socialist constitutions, the issues connected with the grouping, mode of regulation and safeguards of these rights should now be examined.

The first problem connected with the *classification* of citizens' rights, awaiting an answer is: what are those decisive features, specific aspects which are invariably common to all the rights dealt with now and which render a distinction possible between these and other rights of the citizens. The solution of this problem has not been attempted in several Soviet legal writings,²¹ and the rights of citizens as laid down in the constitution are enumerated without further reflections.²² But according to the dominant view the rights now under examination should be considered as a distinct group of citizens' rights. It is suggested by several authors that these rights are related to each other through a common feature, namely that these are "directly connected with the material production process, their content and extent are determined by the level of development of the country's productive forces. For this very reason the social, economic rights constitute ultimately the determining factors for other rights and liberties."²³ It is again held by others that the common aspect of these rights is that they provide the conditions of existence for citizens and create the foundations for the expansion of individual liberty and the enjoyment of other rights.²⁴ Beside giving a substantive definition

²¹ Cf. *Denisov*, *Sovietskoye gosudarstvennoye pravo*. Moscow, 1940.

²² The author of a recently published Soviet manual on constitutional law, A. I. *Lepeshkin*, subjects to criticism, for this reason, the authors and editors of formerly published textbooks. (*Kurs sovetskogo gosudarstvennogo prava*. Moscow, 1961. Vol. I. p. 488).

²³ See: e.g. *Lepeshkin*, A. I., op. cit. p. 489.

²⁴ See: e.g. *Sovietskoye gosudarstvennoye pravo*. Moscow, 1948. p. 148.

of these rights such formal classification may also be encountered, in which these rights are grouped from the aspect whether they provide practicable opportunities in the field of economic, social, cultural rights or of social, political activity.²⁵ In Hungarian writings the stand has been adopted that the inclusion of these rights within the constitution follows from the socialist production relations.²⁶ These rights involve for the citizens a high level and gradual raising of the economic social and cultural standards.²⁷ Imre Szabó makes a distinction between two large groups of citizens' rights: the category of rights of an economic nature and related to the economy, and the group of political rights. He gives a more comprehensive characterization to the former group: The unity of these rights is secured by their connection with the productive activity of the citizens which is, in turn, tied up with various rights bearing upon social welfare.

A secondary characteristic of these rights is the obligation by the state to take positive measures in the field of economy and organization in order to secure the practical implementation of these rights.²⁸

These views are more or less unanimous in maintaining that the rights now analyzed are directly connected with material production, that their content and extent are determined by the level of development of the country's productive forces and that these provide safeguards for implementing other rights of citizens. The above definition of the specific features of economic, social and cultural rights cannot be described as complete.

It can hardly be argued that some of the economic and social rights (the right to material support) are closely tied up with the material production process. But the features of all of the cultural rights and the matrimony, family and youth protection, are rights also of a social nature, which display somewhat other characteristics. It is held by the theory of historical materialism that the conditions of society's material living will determine its ideological and cultural concepts. In most cases, however, economic conditions are not directly reflected but through intricate interpositions and at an ultimate stage.²⁹ While it is a fact that culture, arts and sciences are determined by material production but they also have a *relatively independent standing* of their own. It follows from this tenet that cultural rights are not invariably tied up directly with material production and their content is not directly determined by the level of development of productive forces. Likewise, direct connections between matrimony, youth and family protection on the one hand and material production on the other cannot always be discovered. Incidentally, this is recognized in recent Soviet legal writings attempting to find a more distinctive intrinsic classification for these rights. Beside the generally

²⁵ Cf. *Sovietskoye gosudarstvennoye pravo*. Moscow, 1960, pp 342—343.

²⁶ Cf. *Beér—Kovács—Szamel: Magyar Államjog* (Hungarian constitutional law). Budapest, 1960, p. 448.

²⁷ *Magyar alkotmányjog* (Hungarian constitutional law), Ed. *Beér, J.*, Budapest 1951, p. 367.

²⁸ *Állampolgárok alapjogai és kötelességei*. (The fundamental rights and duties of citizens). Akadémiai Kiadó, Budapest 1965, p. 84.

²⁹ Cf. *A marxista filozófia alapjai* (The fundamentals of Marxist philosophy). Budapest 1961, p. 608.

used terminology "socio-economic rights" there has appeared the term "economic, socio-cultural rights",³⁰ and there is also a concept under which a separation is made between the groups of socio-economic, respectively of cultural-welfare rights.³¹

It may therefore be suggested that economic, social and cultural rights may be grouped within the same category for their content and implementation are determined either directly or indirectly, always in a *decisive way* by the level of development of the socialist economy, and they are related, also in a *decisive way*, to the productive activity of citizens. In the second place, the positive obligation of action of the socialist state is a dominating feature. The distinction between the intrinsic values of these rights must certainly not be left out of consideration. It is only too clear that the right to work and to wages according to the work done are of a basic import in relation to the other rights of citizens. The right to rest e.g. is almost dependent upon the former; the length of working hours, undisturbed leisure are also tied up with it although these are basically determined by the level of production relations but their substance may be strongly affected also by other circumstances. The state of international relations e.g. may have a direct bearing upon the length of working hours. It will suffice to recall that in the Soviet Union — although socialist production relations were strengthened by 1940 as compared to 1927 — an eight-hour working day was reintroduced instead of a seven-hour one, due to the tense international situation. (The constitution's wording, as it is in force today, lays down again a seven-hour working day.)

Before embarking upon the problem of the *classification* of social, economic and cultural rights another issue, no less important is to be examined, namely what rights, conceived in a *concrete way*, should be included within this group. In Soviet writings on constitutional law the view has been adopted that this category includes: the right to work, right to wages according to the quantity and quality of the work done, the right to rest, the right to material support of the aged, diseased and disabled, the right to education, personal property, and the succession in it. (The last-mentioned rights are ranged by Lepeshkin within the liberties.)³² According to V. F. Kotok, to the above rights laid down in the Soviet constitution should be added the right to health protection and the protection of family, children and youth.³³ It appears that in the Soviet writings on constitutional law the scope of social, economic and cultural rights is defined, excepting Kotok, on the ground of the provisions of the Soviet constitution. Legal writers in people's democratic states confine the range of their researches to the rights as laid down in the constitutions. Burda and Klimowiczki, Polish constitutional lawyers, starting from the grouping generally accepted in Polish legal writ-

³⁰ Cf. *Sovietskoye gosudarstvennoye pravo*. Moscow, 1950.

³¹ Cf. *Kotok, V. F.*, *O sisteme nauki sovietskogo gosudarstvennogo prava*. *Sovietskoye gosudarstvo i pravo*. 1959, No. 6, p. 72.

³² *Lepeshkin, A. I.*, op. cit. p. 490.

³³ *Kotok, V. F.*, op. cit.

ings, include within the category of socio-economic and socio-political rights those to work and to its adequate remuneration, to rest, health protection, social insurance and other forms of social assistance, and the right to education.³⁴ According to Snuderl the following rights should be considered, on the ground of the Yugoslav constitution, as basic *socio-economic, and educational-cultural rights*: the rights to work, minimum wages, limited working hours, accommodation, social insurance, civil service, personal property, education, government protection of youth, of invalids, the freedom of arts and sciences, copyright and publishers' rights, the right to attend the assemblies of self-governing educational establishments.³⁵

Thus, in socialist jurisprudence, starting from the provisions of the respective constitutions the following rights are ranged within the group of economic, social and cultural rights: the rights to work, to rest, to personal property and the succession in it, material support, health protection, maternity, children, family and youth protection, education, the government assistance to arts and sciences, the freedom of scientific research and creative art, the participation in developing national culture.

Coming now to the problem of the *intrinsic classification* of economic, social and cultural rights it is found that the socialist science of constitutional law has paid hitherto relatively little attention to the solution of this question. There is a manual³⁶ in which economic rights cover those to work, rest, material support and the social, political rights comprise the rights of equality.

In Poland, several legal writers classify the rights of citizens now discussed according to the functions of the socialist state. Socio-economic rights are regarded in this concept: the right to work, rest, health protection, material support, the protection of matrimony and family; among the cultural-educational rights are included the right to schooling, the participation in developing national culture, in arts and sciences, and the education of youth.³⁷ Recent Soviet legal writings also discuss the problem how to systematize economic, social and cultural rights. According to V. F. Kotok the group of "socio-economic" rights comprises the right to work, personal property, social insurance, that of "cultural-welfare" rights covers the right to education, rest, public health services, state protection of family and children. This classification appears to be susceptible of giving expression to the internal differentiation of the rights now discussed, bearing out also their basic unity. The coupling of a part of social rights with the economic rights marks their close interdependence and their relationship with material production. The ranging of another part in a group with cultural rights bears out on the one hand the "relative independence" i.e. the more distant relationships of these rights

³⁴ Burda, A. — Klimowiecki, R.: *Prawo Państwowe*, Warsaw, 1958.

³⁵ Snuderl, M., *Ustavno Pravo*. Ljubljana, 1956.

³⁶ "The Constitution of the Rumanian People's Republic, a manual of constitutional law." Bucharest, 1957 (in Hung.).

³⁷ See: *Zagadnienia prawne konstytucji Polskiej Rzeczypospolitej Ludowej*, Warsaw, 1954. Vol. II. p. 174.

with material production and also indicates that some of the social rights have common characteristics.

The classification as evolved in Hungarian writings on constitutional law seems to be more appropriate (economic-social-cultural rights). This grouping, it appears, adequately reflects the unity and interdependence of these rights, as well as their independent nature within this unity. The division into two groups of social rights seems to be unnecessary if their different relationships to material production are indicated because a strong coherence is lent to citizens' rights by the substantive identity of their content.

The classification into economic, social and cultural rights is rendered more difficult by the lack in socialist jurisprudence of an exact definition as to what should be meant by the adjectives "economic" and "social". Particularly difficult problems arise in connection with defining the scope of "social rights". In bourgeois jurisprudence all rights not coming under the category of the rights of liberty and equality are termed social rights. In Soviet jurisprudence the rights denoted in the Hungarian terminology as economic, social and *cultural* rights are mostly termed as "socio-economic rights". Under the Hungarian tripartition the word "social" can be used in a more limited sense. This term denotes those rights which secure material, public health, legal assistance to such members or groups of society who, owing to age, infirmity or financial position are either unable to do work or if they are, their earnings are insufficient to maintain an average living standard for themselves or for their families. These rights also provide an increased protection for such institutions the strengthening of which lies in the particular interests of the socialist state. In this way the group of social rights comprises: the right to financial assistance in case of old age, infirmity, disability, the right to public health services, family, matrimony, youth and children's protection.

Nor is the definition of the scope of economic rights an easy task. The chapters of socialist constitutions regulating citizens' rights and duties contain such economic rights, inherent in the socialist economic system, from which direct rights and obligations devolve upon the citizens. Accordingly, the provisions on the social ownership of the means of production — as one that determines the economic system of society — is included in another chapter, for to lay down a right of citizens to the social property of the means of production would be meaningless. But the provision on the protection of personal property laid down in the chapter on the foundations of the social system, confers direct rights and obligations upon the citizens. A problem arises also from another angle, namely that in the recently adopted socialist constitutions (Mongolian, Czechoslovak, Yugoslav) the right of the workers to participate in economic management and control is laid down. It might be conceived that this right should be added to the economic rights, for they provide practical opportunities in the economic field; still, such rights are included, in socialist jurisprudence, within the category of political rights.³⁸

³⁸ Cf. Kovács, I., *A szocialista alkotmányfejlődés új elemei* (New elements in the socialist constitutional evolution), Budapest, 1962, p. 246.

In my view *the group of economic rights* covers those rights of the citizens which, being most closely connected with the right to work, are directly related to production relations. To put it in a concrete form: the right to work, rest, wages according to the quantity and quality of the work done, personal property and the succession in it.

Cultural rights provide opportunities for acquiring education, professional training, sharing in the fruits of scientific and artistic activity, for participating in the continued developing of such achievements. This category comprises the right to education, schooling, to free scientific and artistic activity.

As regards the *modes of regulating* economic, social and cultural rights two questions wait for an answer: one of these is, what place is occupied by the rights of citizens now analyzed within citizens' rights, in what form are they proclaimed? The other question is, how do these rights fit in the system of the constitution, *what connections are there between the provisions of these rights and those on the social system?*

The rights now examined had been differently placed within citizens' rights in various periods of history. In the 1936 Soviet constitution, in order to give emphasis to their fundamental, determining character, these were placed at the head of the list of citizens' rights. In the constitutions adopted in the first and second stages of people's democratic development the place assigned to these rights was varying: these were either heading the list of citizens' rights or were included within the other rights or concluded the chapter on citizens' rights. In recent socialist constitutions, they follow upon the provisions on social equality. As a matter of course, the place allotted to these rights in the system of constitution does not affect their objective valuation, their fundamental, determining nature compared to other rights of the citizens remains unaltered. Still, the variations in placing economic, social and cultural rights outlined above may be traced back to some objective circumstances. The reason why these rights were placed within differing systems of drafting and in various chapters of the constitution in the first and second stage of people's democratic constitutional evolution, can be explained by the particular historical conditions prevailing at the time of their adoption. In several countries the bourgeois methods of regulation continued to exert some effect, while socialist jurisprudence just in the stage of formation at that time could not directly influence the course of constitutional legislation. While political rights were fully implemented, economic, social and cultural rights could not materialize to such an extent and the declaratory nature of a part of these was pointed out in the constitutions themselves.

The method of regulation deployed in recently adopted socialist constitutions reflects the far-reaching changes effected in the meantime, i.e. economic and social equality. The legal repercussions of this state of affairs appear in attaching a particular importance to the equality rights. Within this context economic, social and cultural rights may be regarded as the reasons underlying these attainments or for that matter as their safeguards. In the socialist constitutions now in force two legal concepts may be discovered as to the placing of these rights. The first concept

allocates an outstanding place to those economic, social and cultural rights which help to materialize actual social and economic equality; the rights of equality and liberty coming next in order. The other concept, as has been pointed out, places the attainments in the foreground.

The examination of the question of the form of laying down these rights in socialist constitutions is no less interesting. Two patterns of regulation may be discerned. According to the one the relating provision consists of two principal parts: the first one contains the denomination of the right itself, its personal scope, the second one — which may eventually consist of several paragraphs — provides for the safeguards in question. (E.g. “1. The citizens of the Polish People’s Republic shall have the right to education. 2. The right to education shall be secured to an ever increasing extent . . .” Article 61.) This pattern has been adopted by the Soviet constitution in relation to all economic, social and cultural rights. Such a method of regulation makes, namely easier to decide the issue, to what an extent do these rights mean subjective legal titles. The constitutions of people’s democratic countries now in force (excepting several provisions of the early constitutions, the Korean and Albanian) have adopted the same pattern in respect of the rights included also in the Soviet constitution. While, however, in the Soviet and early people’s democratic constitutions these rights were laid down in a comprehensive, general manner, in the recently adopted socialist constitutions the trend is discernible to lay down a concrete regulation of the rights now discussed. This process will be more amply dealt with when the relating safeguards will be discussed. Those economic, social and cultural rights which are novel as compared to the rights included in the Soviet constitution have been regulated in a manner different from the above. The formal characteristic feature of the manner of regulation is that the relating safeguards are usually not listed, but government support, assistance and protection are accorded to an institution, intellectual outlook or a group of citizens. Among such instances may be mentioned: “The Hungarian People’s Republic shall protect the institutions of matrimony and family” (Section 51); ‘The Hungarian People’s Republic shall take a particular care for the education and intellectual development of youth, shall consistently protect the interests of the young” (Section 52), etc.

In the preceding pages the place allotted to economic, social and cultural rights within the rights of citizens has been examined. In the next pages the place of this group of rights in the constitutions will come under examination. This problem is closely tied up with that of the safeguards but involves issues which are important also for the system to be adopted. The gist of the matter lies in the fact that in socialist constitutions, principally economic rights have been included not only within the rights of citizens but also within the provisions on the social system and economic structure. Such are e.g. the right to personal property and to succession in it. In addition, the *foundations* of economic, social and cultural rights are also found in such chapters of socialist constitutions. It is laid down e.g. in the chapter entitled “The Fundamental Economic Principles and Functions of the State” of the Mongolian constitution, 1960: “The national

income of the Mongolian People's Republic shall be distributed among the members of society in accordance with the quality and quantity of the work done by them, excepting the social fund which shall serve the expansion of socialist economy, the accumulation of reserves, the developing of public health and education, the support to the aged and disabled and the satisfaction of other collective needs of the members of society" (Article 17). According to the Czechoslovak constitution of 1960: "The state shall . . . create the increasingly rich sources of the people's welfare and an environment suitable for the health of the working people" (Para 2, Section 15). There is no need to adduce further instances. It may be sufficiently clear from the above that in socialist constitutions economic, social and cultural rights are regulated in chapters on the foundations of the socio-economic system parallel with the one on the rights of citizens. If the problem is viewed from the aspect of constitutional safeguards, the mutual relationship will be even clearer. To cite another example: the definition of the safeguards of the right to work in the Soviet constitution is: ". . . the socialist organization of national economy, the uninterrupted expansion of the productive forces of Soviet society, the elimination of the occurrence of economic crises, the abolishing of unemployment" (Article 118). Among the provisions on social system is found: "The economic basis of the Union of Soviet Socialist Republics is constituted by the socialist system of economy, the social ownership of the means of production and work which have been consolidated as a result of abolishing the capitalist system of economy, the private ownership of the means of production and work and the exploitation of man by man" (Article 4). As it is seen the provisions on the foundations of the economic system include economic, social and cultural rights and, in turn, the safeguards securing the implementation of economic, social and cultural rights are found in a concrete way among the provisions on the economic system. The question arises at this juncture whether this duality is really warranted? It seems that it is necessary that the provisions on the foundations of the socio-economic system should at all accounts cover the socialist state's economic, social, public-health and cultural *policy*. In this context the provisions directly or indirectly related to work, rest, education, etc. obviously cannot be avoided. The elimination of the dual regulation is facilitated through the determination of the single citizens' rights. Since the constitutional provisions on the socio-economic system already include the social, economic foundations on which the implementation of these rights can be based it would be, if not unnecessary, but certainly an overzealous attempt to evoke repeatedly the economic and social foundations of the socialist state in the chapter comprising citizens' rights and the safeguards of the single rights. There is an increasingly strong view in socialist jurisprudence,³⁹ according to which the further evolution

³⁹ Kovács, I., Az első szovjet alkotmányról (On the first Soviet Constitution). Magyar Tudomány, 1957, Nos 11–12, p. 498., and: A magyar alkotmány fejlődése (The evolution of the Hungarian Constitution). Állam- és Jogtudományi Intézet Értesítője, 1960, No. 4, p. 366; Patiukin, V. A. and Semenov, G. D., Personal liberty and its guarantees in the Soviet Union. Sovetskoye Gosudarstvo i Pravo, 1961, No. 8, pp 17–28.

of the constitutional regulation is leading towards extending the *legal guarantees* of these rights.

The discussion has reached thereby the problem of the safeguards of economic, social and cultural rights. In socialist jurisprudence the guarantees of citizens' rights are considered as a means of their actual implementation and therefore increased attention is paid to analyzing them. Several attempts have been made in Soviet legal writings at classifying such safeguards. According to the most widely accepted view all rights of citizens are backed up by the *socialist system of economy and the political power of the working people*,⁴⁰ this being the most important guarantee. In addition to the over-all economic and political safeguards (which are usually not included within the constitutions among the guarantees of the citizens' rights) certain of these rights are secured by safeguards, laid down in constitutions still of a more or less general nature, but more particularized as compared to the former. These more concrete safeguards are either economic, or political, or of a legal nature. The third echelon of the guarantees (these are usually not included within the constitutions) is constituted by the detailed regulation laid down in various branches of law (this is the case e.g. with the right to work in labour law).⁴¹

A system somewhat different from that outlined above is suggested by A. I. Lepeshkin. No difference of degree is made by him as regards the safeguards which he divides into four groups. He holds that beside the *economic and political* safeguards the third group is constituted by the *Marxist—Leninist ideology* on the ground of which the minds of Soviet citizens are imbued by the ideas of comradesly cooperation, friendship between peoples. It is also suggested by him that *legal* safeguards are created not only by statutes and other normative acts, but also by the existence of various government agencies.⁴²

An examination of the safeguards of economic, social and cultural rights cannot be separated from analyzing the methods of their regulation. When namely the safeguards are reviewed an excellent opportunity is provided for substantiating the view previously touched upon that the trend of regulating economic, social and cultural rights is progressing from a general to a concrete wording of these rights.

It has been pointed out that in the constitutions of the socialist states — due to the impact of the 1936 Soviet constitution — these rights were conceived mainly as cumulative rights or collective rights. Under this type of regulation the safeguards serve not only as the means of implementing these rights but constitute in several instances partial rights. Thus e.g. the right to financial support comprises as a general right in several constitutions the rights to government pension, free medical assistance, social insurance and benefits for the disabled. Accordingly, the content of economic, social and cultural rights is made up, in part, of the partial rights included within the relating safeguards. But the safeguards of the rights now discussed are mainly the basic principles of economic, social and cultural policy which

⁴⁰ Cf. e. g. *Sovietskoye gosudarstvennoye pravo*. Moscow, 1948, p. 145.

⁴¹ Cf. *Umanskiy*, Y. N., *Sovietskoye gosudarstvennoye pravo*. Moscow, 1959, p. 357.

⁴² Cf. *Lepeshkin*, A. I., *op. cit.* pp 524—531.

contain mostly the enumeration of institutions, organs serving the implementation of the respective rights or the objectives connected with their further expansion. For this reason the safeguards of the rights under discussion are closely inter-related and the guarantees of one promote the implementation of another right.

The specific features outlined hitherto are reflected in different ways in the safeguards of the single economic, social and cultural rights. *The right to work* was guaranteed in the constitution of the 1919 Hungarian Republic of Councils under several aspects. In this constitution there were provisions on the social ownership of all farms, industrial, mining and transport enterprises above the limits of small-scale undertakings, whereby the purpose was: to abolish exploitation of man by man and to make production better organized. But in addition to the economic guarantees — not forgetting that until the socialist production relations will have become strengthened unemployment will not be entirely eliminated — it laid down in the constitution that those who would be ready but are unable to find jobs should be supported by the government. In the 1936 constitution of the Soviet Union, no guarantee of a social character has been laid down, due to the fact that unemployment had been eliminated by then on a national scale. The Soviet constitution lays down the safeguards of the right to work in the socialist organization of national economy, the continued expansion of the productive forces of Soviet society, the elimination of economic crises and the abolishing of unemployment. Such a wording of safeguards is based on the principle that the socialist organization of national economy *automatically* guarantees the abolishing of unemployment and the implementation of the right to work. Similar safeguards have been laid down in some of the constitutions of people's democratic countries. The guarantees of this right are regulated almost in an identical manner with the Soviet constitution, in the Rumanian, Polish and Czechoslovak constitutions. In other constitutions the wording of the guarantees of that right displays the role allotted to the organizing and directing activity of the *state*. Under the Bulgarian, Chinese, the 1960 Vietnamese and the German Democratic Republic's constitutions it is an obligation incumbent upon the *state* to introduce such an organization and developing of planned economy whereby unemployment is excluded. As compared to the economic guarantees laid down in the Soviet constitution — recognizing that these are the particulars of one and the same guarantee (i.e. the planned development of the organization of the national economy) — some new elements have been adopted in several constitutions. The Bulgarian constitution, reflecting the early stages of the socialist economic conditions, provides for public works in order to abolish unemployment. Under the Hungarian constitution manpower management is laid down as one of the safeguards of this right. The manner adopted in the Chinese and in this respect completely similar Vietnamese constitutions of 1960 is very remarkable. In the socialist constitutions, in addition to the right to work, the right to a remuneration in accordance with the quantity and quality of the work done is likewise laid down. These two rights are interrelated but not identical. Their safeguards — although bearing characteristics which might be applied to all rights of the citizens — display features which

unequivocally prove that in selecting these specific safeguards the right to work was mainly considered. In the Chinese and Vietnamese constitutions the right to work is laid down but no provisions are found as to adequate wages, while the safeguards include the economic policy aimed at raising real wages. The 1960 Czechoslovak and Mongolian constitutions recognize the contradiction between the regulation of these rights and their safeguards and the latter include the right to adequate wages.

Labour Codes enacted in socialist countries contain numerous safeguards of constitutional importance in respect of the right to work. Among these, those *basic principles* are of a particular importance which are mainly rooted in the general equality of rights of the citizens, but their implementation is particularly stressed by the socialist state in connection with labour relations. Such principles are e.g. "equal wages for equal work", the universal and equal legal capacity to enter into labour relations, the increased protection accorded to working females, etc. In the Labour Codes usually references are found to the right to work provided for in the constitutions; some Codes even go beyond the limits of the constitutional regulation. The Labour Code of the German Democratic Republic e.g. defines the content of the right to work in this way: "... this right shall include the right to an activity conforming to the individual's abilities, to wages according to the quantity and quality of the work performed and to participating in the fulfilment of plans, in the management of national economy and producing establishments."

The *legal safeguards* introduced by these Labour Codes with a view of implementing and protecting these rights are of no less importance. Under the 1953 Hungarian Labour Code e.g. the labour contract shall include as a compulsory stipulation the scope of duties and wages of the party entering into contract. A major guarantee of the right to work in socialist countries is the legal obligation of the contracting parties to give the reasons for dismissing an employee.

The guarantees of the *right to rest* are grouped, in socialist constitutions, around the regulation of working hours, paid annual holidays and the financing of undisturbed leisure. In the Soviet constitution a most specified regulation is found in respect of the length of working hours and its guarantees, as the most important of the relating safeguards. The length of daily working hours is determined in a general way (as a rule 7 hours); and in particular for individuals working under exacting, respectively particularly difficult conditions (6, resp. 4 hours). Annual paid holidays, and as the material safeguard of recreation, the making available of sanatoria, rest-homes and clubs for working individuals are provided for. Some of the people's democratic constitutions, while retaining these safeguards, adopted a manner of regulation somewhat different from that encountered in the Soviet constitution. A generalized form of enacting safeguards was adopted in the Chinese, 1960 Czechoslovak, Vietnamese, Bulgarian, Hungarian and Albanian constitutions. While e.g. in the Soviet constitution the length of working hours is defined in a concrete manner, in the above constitutions statutes regulating and limiting working hours are evoked. It is clear that such a manner of regulation

involves the advantage that amendments of the constitutions can be avoided when the length of working hours comes under statutory regulation. But having the fact in mind that the specific determination of the length of working day is very important for the working individuals the mode of regulation adopted in the Soviet constitution appears to be more appropriate.

The trend of evolution in socialist countries is leading towards the reduction of the length of working hours. In Czechoslovakia in 1956, in Bulgaria in 1958 generally a 46-hour, in the German Democratic Republic a 45-hour working week has been introduced.⁴³ A resolution adopted by the XXIst Congress of the Communist Party of the Soviet Union provided that the introduction of a 7-hour working day for workers and employees had to be completed by 1960. In those people's democratic countries where a 48-hour working week has been retained, reduced working hours are applicable in respect of those who work under unhealthy, dangerous conditions and in night shifts, etc. It is a major requirement of the time-table within the working hours that workers are enabled to rest and wash between hours and to rest between two working days. In several socialist states in certain economic fields a 5-day working week has been introduced affecting particularly those who are working far from their homes, to facilitate thereby their regular visits to their families.

When working hours are reduced it is a fundamental principle both in the Soviet Union and the people's democratic countries that this must be effected without a reduction of wages. In order that the reduction of working hours should not adversely affect labour productivity, the level of production attained must be maintained through introducing new technological methods, more up-to-date machinery, a better organization of the working process, through raising the professional skill of the workers or eventually through employing additional manpower. These are the most significant conditions under which workers who are paid task wages are enabled to earn their average wages within the limits of reduced working hours too. Should this prove unfeasible, wages may be temporarily adjusted accordingly.⁴⁴

As regards the *weekly rest-days* in the Soviet Union, considering the gigantic economic tasks the state was faced with in the first stage of the socialist development the continuous working week had been introduced. This meant a time-table of uninterrupted work, all week long, for the factories and offices; workers and employees were given staggered weekly rest-days, once in 5 days. During later stages other work schedules were introduced. By now the weekly rest-day is usually observed on Sunday. The Councils of Ministers of federal and autonomous republics are authorized to introduce a weekly rest-day other than Sunday in nationality districts, as required by local national customs and living conditions.⁴⁵

⁴³ Act No. 56 of 1956. [45/956]. Sbirka zákonu. September, 29, 1956. No. 24; Council of Ministers Decree No. 35 of 1958, Izvestiya; March 14, 1958; Act No. 21, Gesetzblatt der Deutschen Demokratischen Republic, 1957, No. 8. p. 73.

⁴⁴ Die Arbeit, Berlin, 1957. No. 7. Supplement.

⁴⁵ Decree of the Council of People's Commissars of the Soviet Union on June 27, 1940.

It is forbidden to deny the weekly rest-day to working individuals, unless warranted by exceptional, urgent work to be done. In such a contingency another rest-day must be allowed within the fortnight.

The above apply, in the main, also to *holidays*. As a rule no work must be done on holidays. As an exception working may be allowed in continuously operating plants for reasons of production and technology. In such instances another holiday must be granted.

In people's democratic countries, in Hungary as well, substantially similar provisions prevail in respect of weekly rest-days and holidays. Where different rest-days or holidays are observed, it is rooted in the history or traditions of the respective countries. May Day, however, is a holiday in all people's democratic countries.

The duration of the paid holidays is fixed in compulsory legal provisions aimed also at securing the implementation of the right of working individuals to rest. During the holidays working persons are paid their average wages the whole sum of which shall be paid in advance for its duration.⁴⁶

In the people's democratic countries the statutes regulating holidays with pay are based, in the main, on the same principles. The duration of the basic holidays is fixed between 12 and 14 week-days, unless titles exist which warrant a longer leave. Titles for longer holidays are secured for wide categories of workers in the form of extended basic leaves and supplementary holidays. As a rule such are accorded to young workers, to those working under unhealthy conditions, in several countries to workers displaying outstanding achievements in socialist construction,⁴⁷ to those above 50 years of age,⁴⁸ to invalids,⁴⁹ etc. The relating rules apply both to employers and to workers, the regulation is of a uniform nature and no exceptional measures can be taken. Should eventual collective contracts stipulate divergent conditions these shall not be valid against statutory provisions.⁵⁰

The pre-requisites for the introduction of *organized holidays* on a mass scale have been laid in socialist countries through the nationalization of health resorts and spas of a national importance. There are well-known statistics describing the number of people partaking each year in organized holidays, free of charge, at reduced rates, etc. Those wishing to acquaint themselves with the impressive facts, are recommended to consult the works listed in the footnotes.⁵¹

⁴⁶ See for more details: *Goldstein—Korotkov*: *Rabochoe vremya i vremya otdykha rabochikh i sluzhashchikh v SSSR*. Moscow, 1959, p. 5.

⁴⁷ Thus in Bulgarian Council of Ministers Decree No. 36 of 1958. *Izvestiya* March 11, 1958, No. 2.

⁴⁸ E.g. in Czechoslovakia: Act No. 81 of 1959. *Sbirka Zákonu*, December 31, 1959, No. 38.

⁴⁹ In the German Democratic Republic Decree of June, 1, 1956, G.D.D.R. 1. 1956, No. 55.

⁵⁰ *Schleget*, R., *Leitfaden des Arbeitsrechts*. Berlin, 1959, p. 331.

⁵¹ See: *Goldstein—Kozotkov*: op. cit. p. 5. — The Leisure of Working Persons in Bulgaria. *Syndicats bulgares*, 1958, No. 4. — *Majewska*, M., The Holidays of children and youths. *Prace i zabezpieczennia społeczne* (Social work and rest), 1960, No. 1. — for Hungary: Section 13, Government Decree No. 14 of 1961, IV. 27, and Section 98; Minister of Labour—Minister of Finances Decree, No. 1 of 1961.

The right to *financial support is secured* under the Soviet constitution for the aged, diseased and disabled. As is shown by the guarantees of that right, among the social rights the right to financial support has been laid down in the most abstract way; by now its contents are not entirely homogeneous either. The social policy objective laid down as the first guarantee, namely the extensive developing, through government expenditure, of the social insurance of workers and employees comprises at least three rights: the right to old-age pension, sick pay, in other cases to financial assistance. The other two safeguards, namely free medical treatment and the accommodation in watering-places are of an entirely different nature. These do not provide financial support for workers disabled for some reason but secure opportunities of making use of curative and preventive means to restore the health of diseased workers. In the Polish and Czechoslovak constitutions these two rights have been separated. In the Chinese, Bulgarian, the 1952 Polish, German, Albanian and Korean constitutions not the general right to financial support but *specifically* the right to old-age pension, sick pay, financial assistance, social insurance and worker's compensation were laid down. All socialist constitutions provide for the expansion of the network of social insurance institutions and the extension of social assistance as the basic guarantee of these rights. The social insurance system adopted by socialist states is built on the following principles. In the first place it is *state-run*. This means, in turn, that the expenditure incurred is charged to government funds. The government funds needed to defray social insurance expenditure are recovered, in their larger part, from state enterprises, institutions, and — to an insignificant extent — from the workers and employees themselves.

The government's concern covers *all contingencies of disability* to work: all instances of diminished working capacity, its temporary or permanent loss come within the scope of its operation. Pursuant to the right to financial support sick pay is secured for the aged, invalid, the victims of accidents and disease who have lost their working capacity, further for the periods of pregnancy and child-birth when maternity grant is also added. Social care extends likewise to the next-of-kin who have remained destitute in consequence of a relative's death.

The government-run social insurance, (all its branches) cover, in a compulsory way, all employees entering labour relationships and the employers are legally bound to notify the authorities concerned of their hiring employees, and to pay social insurance contributions.

Social insurance is *universal*, all working individuals in employment are covered by it. Within this framework social insurance benefits are based on equal conditions but vary according to the differences in the work done.

The amount of benefits is determined not only by the quantity and quality of the work performed but also by the length of time spent in employment. The period of time spent in employment constitutes one of the conditions of the title to receive pension (like e.g. the reaching of age-limit in respect of the old-age pension) and also affects the extent of social insurance benefits (the increase of

the supplementary pension in proportion to the number of years to be taken into account).

An important principle of the socialist system of social insurance is the *participation of the insured* in managing and controlling their own social insurance system. Although social insurance is an activity coming within the government's authority, its costs are charged to the state budget, the management of social insurance has been notwithstanding conferred upon the trade unions.

In socialist states social insurance covers, for working persons and the members of their families — in addition to free medical treatment — free hospital treatment, almost free supply of drugs and medical appliances and sick pay for the person concerned. Sick pay e.g. in the Hungarian People's Republic amounts to 65 per cent of the wage, and for persons working at least for two years in the same establishment to 75 per cent.

The safeguards of the *right to health protection* are most extensively laid down in the 1952 Polish constitution. Under its provisions the guarantees of the right to health protection are: the developing of the government-organized health protection, the expansion of public health institutions, the raising of provincial and urban standards, the uninterrupted improving of labour safety, labour protection and labour hygiene, the constantly increasing extension of measures, free medical treatment serving the prevention and curing of diseases, the extension of the network of hospitals, sanatoria, dispensaries, village health centres. These safeguards are found in a more concise but similarly extensive form in the 1960 Czechoslovak constitution.

Among the guarantees safeguarding financial support or assistance all constitutions include the right to medical or free medical treatment.

The safeguarding of the *right to education* is basically effected through the introduction of free, compulsory, unified elementary schooling.

The unified nature of this schooling means that (1) all children, irrespective of nationality, sex, religious denomination, social status are secured an identical elementary education, (2) children belonging to nationalities study in their mother tongue (these mean, in the main, the appearances of the citizens' right to equality), (3) teaching is effected on the ground of unified principles, in state schools as it follows from the public character of schooling and from the separation of state and church.⁵² Schools at all stages of education are run by the state in people's democratic countries. The establishment of private schools is allowed only under the Bulgarian and Albanian constitutions — in conformity with the statutes and under government control.

In China in 1954 when the constitution was adopted the personal and financial prerequisites of a compulsory elementary education were not yet available; for this reason provisions to this effect were omitted from the Chinese constitution. This fact notwithstanding 94 per cent of the children of elementary school age

⁵² These principles are laid down in all of the people's democratic constitutions either in relation to the right to education or in another context.

were attending schools by 1958. The duration of elementary schooling is varying. Most constitutions refrain from going beyond laying down compulsory schooling; school-leaving age is defined only in the German Democratic Republic's and the new Czechoslovak constitutions (18, respectively 15 years of age). The 1960 Vietnamese constitution indicated as a program the introduction of compulsory elementary schooling; up to 1950 the same applied to the Korean constitution. It is a general trend that the duration of elementary schooling should be raised to 8 years.

The tenet that the material safeguards of citizens' rights are tied up with the level attained in socialist construction applies also to the regulation of free schooling. Free schooling in elementary schools is guaranteed under the constitutions of the European people's democratic countries as well as under the Mongolian and Vietnamese constitutions. In the constitution of the Korean People's Democratic Republic this right had been accorded only to the children of parents having no property, but after March, 1959 school fees were abolished in all educational establishments. No mention is made in the Chinese constitution about free schooling but elementary schooling is actually free. In Hungary secondary education has also been free from 1962.

Another over-all guarantee of the right to education in the socialist constitutions is the provision on the incessant expansion of the network of secondary and higher education establishments.

Secondary education is compulsory in the German Democratic Republic. In other people's democratic countries opportunities for secondary education are open — for the moment — for gifted pupils. The same applies to higher education in all countries. In order to make secondary and higher educational establishments accessible for all, the necessary personnel and financial conditions must first be established. That is the reason why the constitutions provide, as an actual responsibility of governments, for the continued expansion of the network of secondary and higher education establishments. The very real nature of this safeguard is amply borne out by the relevant statistics.

With few exceptions, socialist constitutions when enacting the safeguards of the right to education include also the free professional training in industry and agriculture. In the constitution of the German Democratic Republic the question of professional training and the right to education in general are coupled with the free choice of trade or profession.⁵³

The next group of the safeguards of the right to education is made up by the regularly granted state scholarships, the expansion of students' hostels, boarding schools and other means of financial assistance granted to students.

In the German, Czechoslovak and Mongolian constitutions the content and purpose of education are also defined. The provision is presumably directed at preventing the right to education being made use of for purposes contrary to the tasks set to the socialist society. Such an activity is discharged by the socialist

⁵³ Article 35.

state itself (that is why this is not included within the safeguards in the majority of constitutions) still, through laying emphasis on it, the substantive safeguards of the right to education may be strengthened.

In socialist constitutions also the to adult education is laid down. As worded in the 1952 Polish constitution this means the right to make use of cultural achievements, and to take part, through a creative activity, in developing culture. According to the Albanian constitution this means the right to attend cultural establishments. The gist of the matter is that the socialist state which is in charge of protecting respectively directing cultural values and institutions (libraries, museums, cinemas, theatres, exhibitions, cultural centres, etc.) guarantees that these are accessible for all citizens and that they are assisted in participating in such activities.⁵⁴

The assistance to scientific researches, to literary and artistic activity constitutes another kind of cultural rights in people's democratic constitutions. In several socialist constitutions it is also laid down what kind of sciences and arts shall benefit from government subsidies. According to the Albanian constitution arts engaged in developing popular culture, according to the Polish one the progressive ideas of mankind, sciences which are serving the people, arts which reflect popular struggles the needs of the people (the relating provision of the Hungarian constitution is worded in a similar way) shall enjoy assistance as defined in the constitution. The safeguards laid down in the constitutions are of an economic nature: the people's democratic state shall undertake the burden of developing arts and sciences, it shall establish scientific research institutes, cultural-artistic institutions, it shall defray the costs connected with the scientific training of the rising generation, it shall promote the intellectual development of young artists.

In the Bulgarian, Polish, and Chinese constitutions as forms of government assistance, the establishing of scientific research institutes, publishing houses, theatres, libraries, museums, film studios, cinemas, etc. are singled out. This safeguard is distinct from the right to making use of educational institutions and opportunities as a guarantee of the right to education; in the latter instance it is a matter of having access to available establishments, in the former one it is about an obligation incumbent upon the state to establish certain institutions and to expand existing ones. It is pointed out in the Hungarian and Polish constitutions that the government shall regard it as its special solicitude to assist creative intelligentsia, the representatives of sciences, arts and literature.

The constitutional provisions bearing upon *maternity and child protection* are included in the Soviet constitution among the guarantees of women's equality. Thus these constitute detailed rights attaching closely to women's equality operating in the direction of their implementation, namely: government support for single mothers and those with great families, maternity leave with pay, an extensive network of maternity homes, crèches and nursery schools. In people's

⁵⁴ These guarantees are contained in the Polish (Article 62), Czechoslovak (Para 2, Article 24), Chinese (Article 95), Bulgarian (Article 80), and Albanian (Article 31) constitutions.

democratic constitutions in addition to maternity and child protection usually provisions are found for the government protection of the family, matrimony and youth. In several constitutions (Albanian, Bulgarian, Korean, Polish) within this context there are provisions on the equal legal status of children born out of wedlock with other children, and the government support to be granted to families with many children.

The determination of the *personal scope* of economic, social and cultural rights exactly reflects in all countries the class relationship as they had been at the time when the constitutions were adopted. While the safeguards of the economic, social and cultural rights are invariably directly determined by the level of the development of economic conditions, the personal scope of these rights is, in turn, directly dependent upon political, power relationships. Under the 1918 Russian constitution members of the exploiting classes were precluded from exercising the right to education and the state undertook the obligation to create the conditions necessary for the actual access to culture only in respect of workers and poor peasants. Under the 1922 Gruzian constitution the right to education was extended to the working people, under the 1936 constitution, in conformity with the changes in class relations, that right came to cover the entire population. The people's democratic constitutions (apart from the Hungarian, and, in part, the Chinese) accorded these rights to all citizens, in all stages of constitutional development. As regards the content, however the relating provisions of constitutions adopted in the first, second, third stages of popular democratic development, cannot be regarded as identical. In the constitutions adopted in the first and second stages of popular democratic evolution these rights are addressed to the entire population, but when their safeguards are listed sometimes a difference is made between working and non-working individuals, between owners of property and property-less people.

In constitutions adopted after the foundations of socialism have been laid no such distinction is made.

Under the Hungarian constitution all the rights now discussed, under the Chinese one, the right to rest and material support is accorded only to working people. (The right to work is, of course, everyone's due.) It should be noted at this juncture that the constitutions adopted at an earlier stage of socialist development and still in force today are fictitious in this respect. Fictitious in the sense that the scope of the persons entitled to these rights has been more narrowly determined than the actual operation of these rights.

THE CITIZENS' FREEDOMS

1. THE FREEDOMS IN THE SYSTEM OF FUNDAMENTAL CIVIC RIGHTS

First of all the headline of this chapter has to be made clear. Not only because in common parlance, and often even in political or legal literature, this collective term is made to denote the totality of fundamental rights, but also because in the long history of these rights the freedoms of man in fact comprised all groups of rights. Therefore it stands to reason that although in this collection of studies a separate paper deals with the notion of fundamental civic rights, still on discussing the freedoms of man, relying on statements of a general nature included in this paper, the problem of freedoms will have to be attended to again, this time expressly in order to delineate the narrower group of rights, which are restated here under the designation of freedoms. The classification accepted as fundamental, which distinguishes between economic, social, and cultural rights on the one, and political rights in a wider sense on the other part, sets off from the assumption that in the former group the stress is on the material benefits above all required for their implementation, rather than the so-called statutory guarantees, which though by themselves important, are of secondary significance only. On the other hand in the second group, i.e. political rights, not only the statutory guarantees become of primary significance, but for the overwhelming majority of these rights, the statutory guarantees themselves (or their totality) imply the fundamental civic right in question. Of course, the circumstance that the legal or statutory guarantees are here identical with the rights in question, does not mean as though within this group of rights the substantive or material guarantees had no role, or were void of significance. In respect of certain rights the material guarantees (the material benefits required for the exercise of the right) are, so to say, indispensable for the enforcement of the right in question (as is the case e.g. with the freedom of the press). Also the statement may be made that the material guarantees come to the fore with this or similar emphasis only in respect of the one right or the other. Secondly, even in this case the objective of the material guarantees remains to help the statutory guarantees to practical realization. That is, here unlike the sphere of economic, social, and cultural rights, in a certain sense the ratio of the statutory or legal guarantees and the material guarantees will be inverted. This fact by itself makes it clear why so-called political rights are in closer association with the everyday activities of the governmental agencies wielding the executive power (i.e. political power). The respect for these rights, their enforcement or realization are so to say inseparable from the activities of the political power, to the extent that these rights become one with the political activity of exercising the sovereign power. All this emerges and materializes within the framework

of a historically and socially defined political and legal system, and is dependent on the latter.

It is exactly because of this close association with the legal and political conditions characteristic of the state in question that only an actual process of analysis will decide which fundamental rights may be assigned to this group of rights in a given period of historical development; i.e. within the so-called political rights what further groups of rights may be distinguished and by what common criteria. It will be on the ground of such an analysis that a position may be taken in the matter, which fundamental rights may be assigned to this narrower group of political rights, i.e. the group of freedoms, here discussed. In this study of evolution it will have to be borne in mind that not only the exercise of the rights attaches closely to the character of governmental activity, but also the appraisal of the particular right, the theoretical construction given to it, will be dependent on the dominant opinions formed of the nature of governmental power in each period.

2. THE BOURGEOIS THEORY OF CITIZENS' FREEDOMS

(a) The literature of the Age of Enlightenment preceding the bourgeois metamorphosis of the state, in the knowledge of the reality of the absolute monarchy was exploring the ends of sovereign power, its origins, and the trends of a possible change of the social and governmental formations fraught with irreconcilable contradictions. To this end the representatives of this literature set against the divine origin of the state (often by resorting to the theories of earlier periods) the human or social origin of the state, the very idealistic, however in this age revolutionary, new concept of the *social contract*. The initial notion of the social contract itself was nothing but the search for the limitations of sovereign power, the efforts made to explore the sources whence the power of the state "over individual men" emanated. In the same way among the first notions of a limitation of governmental or sovereign power there appeared the first civic rights. The philosophers of the Age of Enlightenment thought they had discovered the limitations of sovereign power in the innate natural rights of man.¹ It was in this way that the claims took shape, and later on their declaration as human and civic rights, which meant the safeguards against feudal autocracy and feudal privileges, or brought into prominence the interests of the rising bourgeois more than anything. It was for this reason that each right emerged in the form of a specific freedom, even the right to property, this right occupying a central position, or more accurately the right of free disposal of civil property. The same goes for the freedom of religion as the inalienable right of all men, on which the State was to exercise no influence: the freedom of the communication of opinions: and in particular the freedom of the press against the censorship of feudal absolutism, the inviolability of the subjects, i.e. in general what were called personal freedoms. These freedoms were

¹ Péteri, Z., Az állampolgári jogok és a természetjogi elmélet (Civic rights and the natural law theory), in the present volume.

meant as barriers against the acts of the sovereign power, barriers which safeguarded the freedom of action of the individual. In the interest of the safeguard of these freedoms it was thought to force the State first to non-intervention, and to the respect for these rights. Eventually the first notion of "human" freedoms wanted to guarantee the freedom of the individual and through it, of the whole society, by limitations imposed on feudal sovereign power.

The literature of the Age of Enlightenment preceding the bourgeois revolutions stopped short of developing the theory of a bourgeois governmental system. Against the autocracy of the absolute monarchy, its feudal privileges, and for their limitation, this literature shaped the notion of a governmental system based on the "social contract" and the sphere of the freedoms "innate to man".

(b) The concept of a revolutionary bourgeois governmental system came to be formulated in the period immediately preceding the French Revolution. This concept no longer starts from the state of the absolute monarchy, but was directed expressly against the feudal system of government. Its principal claims were at a later time summarized by bourgeois jurisprudence under the heading of the principle of people's sovereignty.

Among the philosophers exploring the problems of a bourgeois governmental system the concept of the "Social Contract" launched by J. J. Rousseau went furthest, and embodied the most radical theoretical claims. For a long time bourgeois political and legal literature failed to take notice of the essential differences between Rousseau's concept, and the earlier concepts in like way having their roots in the social contract. And yet there were fundamental differences between these concepts, in particular as far as the freedoms were concerned. The principal trait of the earlier concepts of a social contract was the acceptance of the freedoms as limitations imposed on sovereign power. Rousseau reasoned the other way round. He does not recognize the limitations of sovereign or governmental power; the essence of his concept is not the freedom of a society relying on the limitations of sovereign power, but the subordination of the sovereign power to society. This was also the gist of the concept formulated on the ground of the people's sovereignty. It was for this reason that Rousseau rejected the theory of Montesquieu on the separation of powers. And the unrestricted character of a governmental power built up on the principle of popular sovereignty could not be reconciled to a concept of the freedoms as limitations imposed on sovereign power.² All this could not be considered the annihilation of freedom, for "freedom" as the extent of state interference was defined by the "people" itself. So Rousseau does

² The equality of rights of the citizen is included in this concept, for else the *Contrat Social* of Rousseau would lose its point. However, in this conception an altogether different construction has been given to the freedoms. Rousseau in his works does not explicitly deny the right of combination of the citizens, however, on reviewing the various organizations of society he remembers only the family as a natural formation, and the state as the organization formed by the community of citizens. Rousseau's remarks on the ecclesiastical organizations seem to indicate that in his opinion a segregation of these organizations from the sovereign power (the State) involves risks (*Rousseau, Le contrat social*, Hung. ed.), Budapest, 1905, p. 85.

not consider the freedom of society guaranteed by the juxtaposition of man or society and the State, but thinks of safeguarding the freedom of society by the State as an institution of society.

The ideas of Rousseau and his followers envisaged an idealized society, therefore their theses failed to express social reality faithfully.³ This, however, did not alter the fact that their doctrines had a profound effect on the new bourgeois state, then in process of organization, and it was not by mere chance that the Jacobins, on the left-wing of the French Revolution, relied on these doctrines. For a long time bourgeois legal literature attributed the French Declaration of Human Rights exclusively to the doctrines of Rousseau. Today it has been sufficiently recognized that the theses of human rights as formulated in the French Declaration of Human Rights of 1789 were, besides the ideas of Rousseau, appreciably influenced by the various American Bills and the Declaration of Independence.

(c) The first bourgeois constitutions reflect both variants of the idea of freedom of the bourgeois state. The French Declaration of Human Rights of 1789 primarily reflects the influence of the piloting literature of the Age of Enlightenment, and defines the freedoms as the limitations imposed on the sovereign power. The French Constitution of 1791 incorporated part of this Declaration, however, as a further step, also defined the rights and political guarantees attaching to the "people's sovereignty". According to the position taken at present, part of the institutions attaching to popular sovereignty may be interpreted as civic rights, however, in that period of bourgeois evolution the constitutional definition of these institutions was associated with a fundamentally different theoretical concept. This was most clearly stated in the Jacobinic Constitution of 1793, which declared (Article 9) that the individual availed himself of his freedoms against the civil servants exercising sovereign power.

In this period the proclamation of the freedoms was in first order of a declarative character, and was thought as a barrier to be put up against sovereign power. A significance beyond this was not attributed to the freedoms of man. Not even the idea emerged of defining these rights in the form of special rules, in a positive sense. After the birth of the constitution the statutes promulgated in respect of freedoms did not define the terms and safeguards of the exercise of these rights, but restricted their exercise for a variety of social-political reasons.⁴ In the subsequent periods of bourgeois evolution these freedoms developed to civic rights in the sense that the terms of their exercise were laid down in rules of law. This meant a new stage in the evolution of freedoms, when they were brought under regulation not exclusively as limitations of the sovereign power, but also as the rights of the citizens, of the individual.

³ Already Rousseau mentions the social significance of "property". He emphasizes that the concentration of property in the hands of a few may jeopardize also equality, for such a concentration is apt to bring about shifts in power relations. Therefore a concentration of property should be avoided, still he fails to make reference to the social and governmental tools for the prevention of this process.

⁴ The Statute of Le Chapelier bans assemblies e.g. of "workers and artisans of uniform state and even of uniform occupation . . ."

(d) This stage of evolution dates back to the second half of the 19th century.⁵ The appearance of these rules of law was already associated with the emergence of the labour movement gaining in strength as an independent political force, and the activities of the various liberal and radical political movements.

Almost simultaneously with the promulgation of the rules of law defining the terms of an exercise of the civic freedoms, the natural law concept of "human rights" came to an end⁵. The predominance of the positivistic, or later, the normativistic, concept of law was concomitant with the rejection of the concept of natural law. The purpose of the "human rights" converted into freedoms was not sought for in the limitation of sovereign power, and the rules of law promulgated by the State defined the extent to which the freedoms were realizable. However, the idea of the unrestricted sovereignty of the state creating the rules of law did not rely on the Rousseau-an notion of popular sovereignty, so that this idea essentially meant the recognition of the unrestricted activity of the sovereign state. The civic freedoms shrank to rights guaranteed by the State, and the "freedoms" outside the pale of state regulation were denied the character of civic rights.⁶

Although this trend radically modified the concept of human rights, it scarcely affected the negative character of the concept of freedoms. Be it the freedom of combination and assembly, of the press or any other right, the statutory regulation of all these was admittedly of a negative character. The states, dependent on the variety of conditions, drew the limits of civic freedoms and their exercise closer or wider, however, the primary objective was to define the sphere of activities of the governmental organs. E. g. governmental agencies could not frustrate the formation of associations satisfying the statutory conditions; they could not even prevent the operation of such associations, etc. I. e. the State consented to the free display of activities by the citizens provided that these activities conformed to the terms defined by the State. This was the sphere within which then the subjective legal character of the civic rights, or more accurately, of the civic freedoms, developed, i.e. that the citizens could wring out the enforcement of these rights by the tools of the law against the governmental organs.⁷

This change of the theory of freedoms no longer justified the exclusion of the activities associated with the operation of the governmental system from the sphere

⁵ It is a queer repetition of history that the natural law concept of civic rights came to life again after the Second World War, as the counter-action to the inhuman measures of Fascism. [See Péteri, Z. "Az újjáéledt" természetjog néhány jogelméleti kérdése a második világháború után (A few problems of "revived" natural law in the theory of law after the Second World War), in Állam- és Jogtudomány, Vol. V., 1962.]

⁶ This trend has been expressed by *Kelsen* in a most pithy form. According to *Kelsen* when civic freedoms signify the area not governed by law, i.e. the limitations of the legislative functions of the sovereign power, i.e. the limitations of that power itself, then even the right of taking a walk, moreover even of breathing, ought to be discussed.

⁷ In this sphere — progressively — functions are assigned to the judiciary as a governmental organ segregated from the administrative organs, which is one of the decisive factors of the enforcement of the legal guarantees of civic rights.

of civic rights. This cropped up in particular from the closing years of the 19th century onwards, when these freedoms began to extend to an increasing section of society, and their recognition as civic rights were widely voiced. Rights of this nature were e.g. franchise, the rights of complaint, etc. Later on part of these developed into civic rights brought under constitutional regulation and so their sphere progressively widened. These rights influencing the operation of the governmental mechanism could now hardly be conceived as the limitations of the free action of the governmental organs, as in fact they closely attached to the activities of the latter. Therefore it was no mere chance that these rights began to be recognized as civic rights only after the Second World War, and it is since then that the right of participation in the government has been recognized as a civic right.⁸ However, the position is by no means uniform. Nor is there a uniform position as to whether these rights should be considered freedoms, or a special group of civic rights.

(e) At the end of the 19th century, and in particular after the First World War, in the course of evolution of the bourgeois constitutions, the group of civic rights began to take shape which insisted upon positive action on the part of governmental organs, i.e. the economic, social and cultural rights of the citizens. (Right to work, right to social insurance, right to education, right to leisure, etc.)

In the discussion of freedoms this topic has to be touched because at least in the initial period these rights were conceived more or less as freedoms. The emergence of these rights in constitutional charters was as a rule associated with the claims of the labour movement. It was almost a regularity that they were brought under constitutional regulation mostly in countries where the labour movement had an appreciable influence on society. Actually these rights have become part and parcel of the nomenclature of civic rights, and to a greater or lesser degree have been taken up in the constitutions of nearly every state.⁹

Bourgeois ideology and forensic literature are at a loss when it comes to deal with these civic rights. As a matter of fact the civic rights insisting on positive action on the part of the State did not conform to the earlier concept of freedoms imposing limitations on the sovereign power. These rights were even outside the pale of positivistic notions of law. At the turn of the century, when though not on a constitutional, yet on a statutory level certain elements of the economic, social and cultural commitments of the State began to appear, bourgeois political and forensic literature protecting liberal capitalism denied the civic-right character

⁸ The most detailed definition of these as civic rights is perhaps included in the Declaration of UNO of 1948. These are referred to in the Declaration essentially as freedoms. Article 21 of the Declaration declares that the citizens are free to participate directly, or through their representatives, in the government of their country. In this connection the Declaration, in a separate paragraph, declares the equal conditions of the acceptance of public offices, and the universal, direct franchise by ballot.

⁹ See *Lőrincz L., Gazdasági, szociális, kulturális jogok* (Economic, social, cultural rights), in this volume.

of these rights.¹⁰ According to this concept the State could not guarantee the right to work, could not define the stipulations of labour contracts by way of enactments, for if the State acted this way it would abolish the freedom of contract as one of the cardinal freedoms, etc. The inclusion of these rights in bourgeois constitutions was associated with the spread of the theories of a "welfare" state.

From this evolution of the theory of civic freedoms the conclusions may be drawn which for the formulation of the notion of freedoms are absolutely essential.

First, the theory of freedoms was formulated by the literature of the early years of the Age of Enlightenment, and opposed to the state of feudal absolutism. In this concept the freedoms were meant as a limitation of absolute power. In the literature of the Age of Enlightenment society was, from the aspect of an equality of rights conceived as uniform, and the individual endeavoured to widen the sphere of free action so as not to be restricted by the sovereign power. In the second half of the 19th century the natural law concept of civic rights was called into doubt, and these rights began to be differentiated. In the new concept of civic rights the freedoms formed a group of the civic rights. In general those rights were included in the freedoms which could be considered bars to the activities of the governmental machinery.

Secondly, with thrusting the natural law concept of civic rights to the background, the subsequent differentiation of these rights raised the question of the right of participation of the citizens in the government. Although attempts were made to include these rights in the freedoms, still since these rights could not be well conceived as limitations to governmental action, the attempts were consigned to the peripheries.

Thirdly, the economic, social and cultural rights of the citizens began to manifest themselves in the period of the differentiation of civic rights into various groups of law, and were also brought progressively under statutory regulation. At the turn of the century opinions were formulated which denied the civic-right character of these rights. Others recognizing their civic-right character began to formulate them as freedoms. Nowadays the classification of these rights in a separate group of law may be considered universal.

Finally, the differentiation of the civic rights brought about the intrinsic differentiation of the freedoms. Two large groups of civic freedoms took shape. The one group, as the limitation of governmental action, tended to safeguard the sphere of the autonomous action of the individual citizen. These were considered personal freedoms. This groups included the inviolability of domestic privacy, secrecy of correspondence, free choice of the domicile, in a certain sense the right to property, and certain elements of religious freedom and the freedom of conscience. The other group of freedoms included the rights which in the last resort may be defined as those of the individual citizens, still owing to their social-

¹⁰ These have been interpreted as rules safeguarding "objective protection" rather than, civic rights by *Adamovits, L.*, in his work; *Grundriss des österreichischen Staatsrechtes*, Vienna 1927. The same position has been taken e.g. by *Hauriou*, *Précis de droit constitutionnel*, Paris, 1927.

political character presupposed the cooperation of the citizens. These rights included the right of combination and assembly, the freedom of speech and the press, further the elements of the exercise of the freedom of conscience and religion associated with the public activities of churches as religious organizations. For reasons of discrimination these rights were often designated as political freedoms. Their civic-right character began to unfold itself in the second half of the 19th century, with the eclipse of natural law. It should be noted however, that part of these rights was taken up also in the catalogue of classical freedoms (freedom of the press, freedom of assembly, freedom of conscience), however, in conformity with the concept of natural law they were formulated as the rights of the individual citizens.

3. EVOLUTION OF THE SOCIALIST THEORY OF FREEDOMS AND THEIR CONSTITUTIONAL ENACTMENT

(a) Labour, gathering in strength in both organization and social-political consciousness within the framework of bourgeois society, by degrees formulated a new concept of the contradictions in the bourgeois social and governmental system and the need for a revolutionary change in the fundamental institutions. These opinions advocating the need for a new social system were necessarily revolutionary, and contradicted the theses of bourgeois ideology in their very foundations. Similar to the ideology of the bourgeois revolutions also in the social-political concept and outlook of the working class the State occupied a focal point as an institution guaranteeing the enforcement of political power.

The fundamental, and qualitatively new thesis of Marxist constitutional theory originating from the discovery of class warfare and its analysis was that, in the last resort, the State was one of the tools of the political power of the economically predominant class. This thesis was not intended as a denial of the universal society-organizing function of the State, it merely distinguished the functions of the State, the forms of wielding political power, and the *essence of power*. The organisatory function of the State in the life of society is ultimately determined by the class content of the State, however, the method of exercising public power should not be confounded with the essence of power, i.e. the class content of the State. The discrimination between the content of the State and its form of presentation manifested itself most clearly in the Marxist-Leninist theses on democracy and dictatorship.¹¹

At the same time Marxism-Leninism laid down that the Proletariat representing the majority interest of society would make use of the state form, of the state tools in the exercise of power. The classics of Marxism clearly emphasized that the Dictatorship of the Proletariat as the class content of power, would materialize through the proletarian State, and its organs, even when, to quote Engels, the State will have ceased to be the state in the traditional sense, or even when the

¹¹ See *Lenin*, State and Revolution. (Hung. ed.), Budapest, 1949, p. 155.

evolution of society would point towards the liquidation of classes, or in the beginning, of class antagonism. This evolution could, and gradually would even, bring about the withering away of the State as an organization invested with rights of public authority existing in society.

The Marxist concept of constitutional theory in its approach of the problem from the aspect of civic rights, or more accurately freedoms, presupposes a new appraisal of the civic freedoms. Marxist theory from the very outset denies the "natural law" concept of civic rights, or more accurately any assumption of freedoms as the limitations of power. Essentially nothing can restrict the political power of the economically ruling class, or classes. Any limitation of power — in reality — can only derive from the class power-relations of society, and never from the state power. The power of the ruling class, or the method of the exercise of this power, can be influenced e.g. by the social forces on which this power relies, or the principles or policy resorted to at the conclusion of alliances with other classes or layers of society, etc. On the other hand the State is the tool of the exercise of political power, the tool in which this concrete power is embodied in reality, — even if not exclusively.

However, the maintenance of this state-type organization at the same time meant the recognition that this organization, transformed so as to satisfy the exigencies of the new class content, would be accepted and made use of also by the Dictatorship of the Proletariat. This of course was identical with the exercise of power by state means, i.e. by an assertion of the principal characteristics of any State, so also of the State of the working class. To quote a few only, these means were the prerogatives of the sovereign power, the manifestation of governmental coercion, the necessity of the employment of civil servants, the manifestation of the class will in the form of State will or rules of law, legality as the method of wielding sovereign power, etc. That is, the civic freedoms manifested themselves by recognizing the true contradictions of society. Thus the mutual relationship between the governmental mechanism and the ruling class, the method of exercising sovereign power, the extent of the prerogatives of the executive power and their realization would have to be settled with due regard to this circumstance. However, whereas in political and legal opinions associated with the bourgeois state the essence of power and its class content are concealed by the outward form of manifestation, of the state, the socialist constitutional theory will reveal the class character of power, clearly distinguishing it from its outward manifestations of state and law, and from the activities of the governmental organs, and rules of law.

As has already been pointed out, the appraisal of freedoms was in all stages of social evolution closely associated with the appraisal of the functions of the State. The freedoms, from their first appearance, organically adhered to governmental activities, and the appraisal of freedoms occupied a particularly significant position in the formation of the different notions of the State. As a matter of course a study of the freedoms does not enable a close investigation of the various theories associated with the State. It has been our purpose merely to indicate

that the different notions formed of the nature of the State eventually determine the actual content and limitations of the freedoms.

In this study, within the conventional framework of the freedoms, first of all the evolution of the socialist freedoms will be reviewed. By bearing in mind the conclusions drawn from this evolution the problems associated with the socialist concept of the freedoms and the growth of their nomenclature will be investigated.

(b) *The appearance of freedoms in the Soviet constitutions.* The first instrument of significance as regards civic freedoms, after the October Revolution, was "The Declaration of the Rights of the Working and Exploited People".¹²

It is interesting to note that the first victorious proletarian revolution also thought it necessary to mark the fundamental social and political changes which represented the primordial claims of the working class now in power, by a declaration of rights. However, if we compare the French Declaration of Human Rights of 1789 and that of the Socialist Revolution of 1917, the fundamental difference between the two will be obvious at the first glance. Whereas the Declaration of the French bourgeois revolution laid down the "human rights", and believed to ensure the freedom of society by imposing limitations on the sovereign power, the declaration of the Socialist Revolution centred round the fundamental changes that had taken place in the possession of power, and a limitation of this power was not even mentioned. The Soviet Declaration announced that "Russia is the Soviet Republic of the delegates of workers, soldiers, and peasants"; power could be exercised centrally and locally only by the soviets called into life by the Revolution; that the soviets were the organizations of the toiling classes, there was no place in them for the exploiters.¹³

The Declaration does not deal with the State as the organization wielding the executive power. The representative character of the soviets, their leading role, the subordination of the governmental system to the soviets, besides indicating the basic characteristics of the new socialist governmental system, in first order expressed that the working classes exercised all power through these class institutions. Understandably, this revolutionary instrument did not define the civic rights, and within them, the freedoms. "The rights of the working and exploited People" ensured that the limitations of civic activities — hereincluded civic rights and freedoms — could be defined only in harmony with the power of the ruling class. It seems as if Rousseau's idea had returned to a certain extent saying that the freedom of mankind could be realized by the subordination of the organs exercising sovereign power to society rather than by imposing limitations on sovereign power. The Soviet State gave expression in an unambiguous manner to the class character of power. Accordingly the new sovereign power could be only that of the workers, from which the former exploiters had to be excluded. The interests of the different classes of society were not uniform, so that neither the rights guaranteed for these classes could be uniform. This was the concept

¹² The wording of the Declaration is included in the collection of documents "Sezdy Sovietov v dokumentakh", 1917–1937, Moscow, 1959, Vol. I, pp 27–29.

¹³ The Declaration then deals with further problems of little interest for this study.

which prevailed also at the definition of the content and sphere of the revolutionary new freedoms.

The need of the creation of a Soviet constitution emerged after the lapse of half a year following upon the Declaration. The introductory articles of the various drafts dealt with the definition of the rights of the workers. However, a cursory study of the relevant provisions of the drafts already reveals the absence of the traditional freedoms. The drafts of the first period included, under the heading of the workers' rights, provisions on the economic liberation of the workers, on the termination of exploitation, on internationalism, the Dictatorship of the Proletariat and the poor peasantry, the transfer of means of production to social ownership, foreign political problems already discussed in the Declaration, etc., i.e. essentially the Declaration was repeated.

The Fifth All-Russian Congress of the Soviets approved the Constitution of the Russian Federation on the 10th July, 1918. After the various drafts had been discussed extensively the Soviet Constitution essentially adopted the wording of the "Declaration of the Working and Exploited People." At the same time among the general provisions of the Constitution the civic rights (among these the civil freedom of opinion, the freedom of assembly and combination) were formulated. Thus, socialist freedoms in the modern sense appeared for the first time in the Constitution of the 10th July, 1918.¹⁴ This did not, however, by far mean that the socialist state was wholly ignorant of the rights of the workers. However, in a way similar to the Declaration their legal formulation expressed the requirements of the consolidation of the power of the workers rather than the rights of the individual citizen.

Consequently, the enactment of civic rights did not mean the recognition of freedoms based on universal equality of rights, without class limitations as known from the bourgeois constitutions. In the present case the constitution guaranteed the freedoms exclusively for the workers. In conformity with the provisions of the Constitution only the workers and poor peasantry were granted the freedom of opinion. The right of assembly was formulated by the Constitution already as a civic freedom, however, the conditions for the exercise of this freedom (rooms, heating, lighting, etc.) were guaranteed only for the working classes and the poor peasantry. In the interest of the freedom of conscience of the workers the Constitution proclaimed the separation of State and Church, the emancipation of the schools from Church control, and at the same time granted the freedom of both religious and anti-religious propaganda to "all citizens". I.e. the recognized

¹⁴ This constitution does not declare the equality of rights of the citizens, however, defines the economic, social, and cultural rights of the citizens within a wide sphere. Unlike the present socialist constitutional nomenclature of civic freedoms, the constitution does not declare the personal freedoms (inviolability of the person of citizen, secrecy of correspondence and the inviolability of the home, the free choice of the domicile); the freedom of the press has been brought under constitutional regulation as the freedom of communication of thought. Among the freedoms the constitution does not mention the right of complaint, the freedom of scientific and artistic activities, etc.

civil freedoms were formulated with differentiation already in the first Soviet Constitution¹⁵, however, the form of the constitutional enactment was still primarily a political one. E.g. the Constitution did not define the legal guarantees of the freedom of the press, but emphasized that the freedom of opinion of the workers could now be realized because the Soviet State terminated the control of the press by capital (Article 14 of the Constitution). The declaration of the freedom of combination did not lay down the legal conditions for the formation of various societies or associations, but simply announced that the Russian Federation by liquidating the economic and political power of the propertied classes removed all obstacles in the way of the freedom of organization of the workers (Article 16 of the Constitution).

The constitutional formulation of the freedoms of the workers introduced new elements into the shaping and evolution of the socialist civil freedoms. The constitutional definition of the freedoms could be traced to a number of factors. The socialist state also adopted the institution of a written constitution for the state-controlled construction of society. The function of the constitution as a political charter and its sphere of regulation had taken a definite shape in the course of the bourgeois revolutions. The social-political significance of such charters could not of course be ignored in the Russia of 1918, where besides the Bolshevik party also parties of a different character and other political movements were active.

As regards the appearance of the freedoms the constitution as a historically already defined enactment had presumably great significance.

The socialist definition of the freedoms in a constitutional charter was also prompted by that, at the end of the 19th and beginning of the 20th centuries, the labour movement had been already the most consistent force in Europe which waged a campaign for the enforcement of the civil freedoms incorporated in the bourgeois constitutions in the practice of society. Therefore also from the point of view of class-war conducted on an international scale the regulation of the rights of workers, and within this, of the freedoms of the single citizens in the charter of the first state of the victorious working class was of utmost importance.

(c) *The Constitution of the Soviet Union of 1936*, in view of the stage reached in the evolution of the socialist economic and social order, the complete victory of socialism, and the liquidation of the former exploiting classes, extended the fundamental rights not only to the workers, but without discrimination to all

¹⁵ Some of the contemporaneous documents criticize the constitutional formulation of the freedom of conscience. The reasons of this attitude may presumably be found in that the constitution considered the freedom of religion a purely private affair. Lenin, on discussing the content of the freedom of conscience, pointed out that, politically, the religious opinions of the citizens could not be considered a "private affair". It was the function of the socialist state to propagate the scientific outlook, to continue the ideological-political fight against religious ideas. In the course of this fight, however, no coercion should be applied against citizens professing a religious outlook. (*Lenin, Collected Works*, Hung. ed. Vol. 15, Budapest, 1955, pp 411—413.)

citizens. This applied also to the civil freedoms. Within the sphere of the freedoms the Constitution declared the freedom of conscience of the citizens, the freedom of speech, and the freedom of the press (in the Constitution of 1918 the freedom of opinion was distinctly split up into these two freedoms), the freedom of assembly (by segregating the freedom of demonstrations and processions), and the freedom of combination. As has already been mentioned, in the Constitution of 1918 these freedoms were announced as the rights of the workers. The sphere of the freedoms was widened in the Constitution of 1936, inasmuch as it declared the personal freedoms of the citizens. (Personal inviolability, inviolability of domestic privacy, secrecy of correspondence.) As will be seen later, the appearance of the personal freedoms in the Constitution did not only add to the catalogue or nomenclature of freedoms, but at the same time reflected the change in the approach of freedoms, moreover in general, of civic rights.

The Constitution of 1918 defined the rights of the ruling classes primarily in subordination to the exercise of power. A primary method of this subordination was the declaration of the absolute power of the soviets emerging as the organs of the working class and its allies now in power. The Constitution of 1936 in like way set out from the leading function of the working class, from a governmental and social system translating the ends of the Dictatorship of the Proletariat into practice. However, it expanded the social basis of the state i.e. the alliance of labour and peasantry so as to suit the evolution, and essentially drew the whole society into the exercise of power. In the construction of the governmental system, or more accurately, in the formation of the representative organs, this meant a repeal of the restrictions imposed on franchise, and the representative organs became those of society as a whole. Under these circumstances the State as the organization exercising executive power had to be reassessed. The State ceased to be the exclusive organ of specific layers of society, and became the representation of the will of society as a whole, where the political trend of this will was embodied by the leading role of the working class, and the guiding functions of the Communist Party.

To this it should be added that in the course of the evolution of the first socialist society the governmental means of the exercise of power were progressively coming to the fore. For the Soviet power, standing by itself in a capitalist environment, this process of evolution was in a certain sense inevitable. The constitution of 1918 proceeded from the assumption of world revolution. This found expression also in the constitutional enactment of the rights of the citizens.

After the revolutionary wave subsided, the economic difficulties of the Soviet State in the capitalist surrounding, the increasing threat of an attack from outside, demanded the centralization of the executive power. This centralization was brought about by the reinforcement of the executive power. The relations of the political organization of society, in first order of the state power holding the executive power, and of the single citizens had to be organized on novel lines, in a manner as required by the socialist equality of rights. In such circumstances, besides the democratic operation of the representative organs and the direct

democratic institutions, the demand for an extension of the civil freedoms also emerged.

Earlier it has been pointed out that the promulgation of personal freedoms in the Constitution of 1936 was not merely an act of extending the catalogue of civil freedoms. It would hardly be possible to derive these civic rights from the specific rights of the ruling class. Their fundamental principles could be traced rather in the method of exercise of the state power, or from another aspect, in a corresponding limitation of the activities of the governmental organs. However, this applies to the executive machinery rather than to the state power itself. This opinion is amply confirmed by that the Constitution of 1936 when listing the safeguards of civic rights, in addition to the economic and political safeguards also defines the legal guarantees, i.e. the guarantees of the civic rights granted by the State.

In 1936, beyond the circumstances specified above, the wider constitutional regulation of the civil freedoms was obviously influenced by the circumstance that the Constitution was born at a time when through the strengthening of the Fascist tendencies the democratic rights of the citizens were in jeopardy. The Soviet Constitution of 1936, thus, was the first international-political instrument of the first socialist state in the safeguard of democratic rights and freedoms against the advancing Fascism.

(d) The content of socialist civil freedoms was enriched also by the *evolution of people's democratic states* after the Second World War. As is known the people's democracies set out on the path of the construction of a socialist economic and governmental system in a relatively peaceful period of evolution. In the majority of instances this evolution began within the framework of a bourgeois democratic system of government, where the basic institutions of the bourgeois democracy had a decisive significance from the point of view of class war, and even for the acquisition of power. These democratic institutions also included the civic rights. Moreover, after the victory over Fascism decisive importance was attributed — all over the world — to carrying into effect civic rights, mainly for reasons of a democratic evolution. It was not by mere chance that in the people's democracies, on the insistence of the social forces which had joined in the fight against Fascism, the guarantees of civic rights (and within these, of the freedoms), made their appearance in the first significant enactments of the democratic governments. Consequently in every people's democracy the first constitutional instruments brought under regulation the exercise of civic rights and the guarantees of their enforcement. In the majority of cases and in response to demands forthcoming on an international scale, first of all efforts were made to guarantee the traditional, "inalienable human rights". In Hungary e.g. Act I:1946 on the constitutional form of the country the fundamental "human rights" were guaranteed in the Preamble.¹⁶

¹⁶ The Hungarian Act I of 1946 contains the following provisions on civic and human rights: "The Republic guarantees to its subjects *the natural and inalienable rights of man* (italics are the author's). The natural and inalienable rights of the subjects are in particular personal freedom, right to a human life free from oppression, fear and want, free utterance

As befitted the democratic evolution, the first instruments bearing on fundamental civic rights as a matter of course defined the general democratic character of the civic rights and their legal guarantees. This was in particular clear in the constitutions introduced during the first period of popular democratic evolution (the first Yugoslav and Polish, the Bulgarian and Albanian constitutions). These constitutions did not yet mention the class character of civic rights, and defined the guarantees of the enforcement of these rights primarily in respect of the personal freedoms, the freedom of conscience, and the right of petition (complaint).

The constitutions of the people's democracies partly extended the nomenclature of freedoms. E.g. they declared the freedom of scientific and artistic work, the right of citizens to submit petitions and complaints, etc. The constitutions introduced during the initial period of democratic evolution to a certain extent limit the right to property. In constitutions introduced later this right was omitted in general, or re-entered among the constitutional provisions on the social order. The reason of this could be traced to the transfer of the basic means of production to national ownership. After the means of production had been transferred to national ownership the sphere of socialist personal property began to take shape, and its protection became an important function of the constitution.

The evolution of the people's democracies, the approach of the civic rights from the aspect of the exercise of state power, had a marked effect on the formation of the socialist freedoms. Whereas in the Soviet Union the freedoms had come into prominence with the rising to power of the Proletariat, and with its consolidation: in the people's democracies, owing to the peculiarities of evolution, the civil freedoms were brought under regulation with a view to the exercise of democratic state power. In the second stage of the evolution of the people's democracies, after "the year of change", the class character of the people's democracies began to assert itself parallel with the process of laying the foundations of the socialist society and economy. This class character of the state then also determined the content of fundamental civic rights.

However, apart from a few exceptions, this evolution was not accompanied by such a restriction of the political rights of the former exploiting classes as was known in the first period of the Soviet state. This circumstance greatly influenced the content of the civil freedoms and the sphere of their enforcement.

The progressive unfolding of the socialist character and content of the civil freedoms manifested itself in the constitutions promulgated in the second period

of thought and opinion, free exercise of religion, the right of combination and assembly, the right to property, personal safety, work and a livelihood worthy of man, right to free mental enlargement, right to participation in directing the life of the state and the local government bodies."

"No subject can be deprived of these rights unless by legal procedure, and the Hungarian State guarantees these rights to all subjects without any discrimination, within the framework of the democratic governmental order, uniformly and by equal standards." This is declared in the Preamble to the Act on the Republican Form of Government. Act X: 1946 adds sanctions under penal law and guarantees the above declaration on the fundamental rights.

of people's democratic evolution. The constitutions of this second period established the representative organs of the socialist type: in general all institutions which gave expression to the influence of society in the government's operation, and the guiding role of the working class. Consequently the democratic rights and freedoms of society and its members were no longer restricted to the civic rights, but found expression also in the various governmental, social, or economic institutions of socialist democracy. Moreover, concomitantly the enforcement and the extension of the guarantees of civic rights and freedoms was gaining in significance.

The constitutions introduced in the second stage of people's democratic evolution, similarly to the Soviet Constitution of 1936, defined the social, political, and economic guarantees and limitations of the freedoms. So e.g. the Polish Constitution of 1952, the Czechoslovak Constitution of 1960, and the Hungarian Constitution of 1949 declared among the guarantees of the freedom of speech and of the press, that the State would place the printing offices and paper at the disposal of the workers.¹⁷ By the side of such fundamental social-political guarantees gradually the constitutional definition of the legal guarantees came into prominence. As a result new elements were incorporated in the freedoms as defined by the constitutions of the people's democracies. To mention a few of the elements only: the exercise of the right of assembly was granted in the majority of constitutions in harmony with the interests of the institutions of the people's democracies and the safeguard of the political and legal order.¹⁸ Certain constitutions e.g. that of Yugoslavia, declared that certain specific civic rights could be defined or limited by enactment only in conformity with the provisions of the Constitution. A few constitutions promulgated in the present stage of socialist evolution at the same time lays stress on the political guarantees of the fundamental rights. Whereas e.g. the Czechoslovak Constitution of 1948 laid down a whole system of safeguards and limitations of the freedom of the press (suppression of the censorship, compulsory statutory regulation of the publication of daily papers, the press must not be turned into a profit-yielding venture, state monopoly of film, radio and television, etc.)¹⁹, the second Czechoslovak Constitution of 1960 mainly declared the guarantees of a political character.²⁰ In particular the function of the legal guarantees came into prominence in the recent constitutions of the people's democracies in association with the safeguard of personal freedoms and of the freedom of conscience.

In the socialist countries, amidst the new political conditions unfolding in the years after 1956, two trends were discernible in the constitutional definition of

¹⁷ Para (2), Article 55, of the Hungarian Constitution of 1949; Para (2), Article 71, of the Polish Constitution of 1952; Para (2), Article 27, of the Czechoslovak Constitution of 1960.

¹⁸ Article 24 of the Czechoslovak Constitution of 1948; Article 9 of the Constitution of the German Federal Republic of 1949.

¹⁹ Articles 18 to 22 of the Czechoslovak Constitution of 1948.

²⁰ Para (2), Article 27, of the Czechoslovak Constitution of 1960 declares as a guarantee of the freedom of press that publishing firms and printing offices are in public ownership and that the State places these at the disposal of the workers.

civic freedoms. The one trend was the growth in significance of the civic rights, and within these of the freedoms. This was reflected by the definition of the citizens' rights in greater detail, and preceding the provisions relating to the governmental organization in the recent constitutions of the socialist countries.²¹ The other significant trend was characteristic of the evolution of the exercise of political power. By the side of the governmental-representative organs the new trend manifested itself in the growth of the functions and significance of activities of a social character in the many spheres of social-political, economic and cultural life. This trend had an influence on the constitutional definition of the civic rights in so far that, in addition to the section of the charter traditionally governing the civic rights, also the sections defining the social order incorporated the fundamental freedoms.²² The significance of the evolution of a constitutional regulation is discussed in the following section, based on the analysis of the peculiarities of the content of socialist freedoms.

4. SOCIALIST CONTENT OF THE FREEDOMS AND THEIR CONSTITUTIONAL SYSTEM

Owing to the different conditions of the socialist revolution and the construction of the new socialist social-economic system in the Soviet Union and in the people's democracies, certain peculiarities can be distinguished in the sphere and content of civic rights, and within these, of the freedoms. As has already been indicated, in the years following upon the Great October Socialist Revolution of 1917, the working class come to power realized its victory primarily through political organizations and class institutions — mainly through the soviets — and controlled the governmental mechanism through these. The constitution of the Russian Federation of 1918 defined the civil freedoms (in close association with the exercise of power and the government of the State of a novel type) as the collective rights of the ruling class. The overthrown exploiting classes were deprived of the exercise of political rights. Since the civic rights were regulated in connection with the exercise of power, the personal freedoms were not laid down. As has already been mentioned, except in a few countries, the peaceful development of the people's democracies made it unnecessary to restrict the political rights or freedoms of certain layers of society. In these countries the demolition of the earlier barriers of the democratic rights and freedoms, and the far-reaching social-political enforcement of the fundamental rights in the years following upon the Second World War and the Liberation, advanced the democratic reconstruction of the political, economic and social system. The peculiarities of popular democratic evolution, in first order the guiding and leading role of labour and the Communist Party guaranteed that the realization of civil freedoms ensued in harmony with the

²¹ Czechoslovak Constitution of 1960; the Constitution of Mongolia of 1960.

²² So e.g. the Czechoslovak Constitution of 1960 defines the right of combination of the citizens within the social order (Article 5).

exigencies of the political and social system. Because of this the essentially socialist constitutions terminating this period defined the freedoms as the rights of the workers. In the Soviet Union the Constitution of 1936 declaring the victory of Socialism abolished the earlier limitations imposed on the freedoms, and established the system of the personal freedoms of the citizens. At the same time, in the people's democracies, besides the guarantees of personal freedoms, a gradual socialist metamorphosis of the content of the political freedoms was discernible also in the respective constitutions.

This brief survey of the peculiarities of the evolution of the freedoms clearly shows that concept, content, and nomenclature of socialist freedoms are by no means invariable. When therefore we attempt to define the concept of socialist freedoms, we wish to stress that our definitions relate to the present social-political stage of the evolution of the socialist state. This definition will be uniform with the concept of the first period of popular democratic evolution, and no doubt in the subsequent stages of socialist evolution new elements will be incorporated in the notion and nomenclature of freedoms. As will be made clear later, the symptoms of this evolution already manifest themselves, in first order, by the fact that certain governmental functions are increasingly realized through social organs, social agencies.

In this study of concept and content of the socialist freedoms two groups of the civic rights will be omitted. The one group includes the rights guaranteeing the equality of rights of the citizens. These at the same time are fundamental constitutional rights stipulating that all citizens, irrespective of the position they occupy, are qualified for equal rights, and burdened by equal duties. The other group of rights includes the economic, social and cultural rights. Of these it is characteristic that the State undertakes concrete action for their implementation. These two groups of civic rights are followed by the fundamental civic rights whose principal characteristic is that they guarantee the freedom of activities of individual citizens as well as of groups of citizens. The limitations, conditions and guarantees of these activities are in first order defined by legal means. The State guarantees the right of the citizens for the performance of certain activities in rules of law, and in these rules of law restricts the interference of governmental organs in the delimited sphere of activities.

When now the freedoms interpreted as the limitations of the actions of governmental organs are studied from closer quarters, then essentially two groups of freedoms may be distinguished.

The *first* group consists of the freedoms which are associated with the activities or the enforcement of rights of the individual citizen. These are called personal freedoms. The rights included in the personal freedoms may be differentiated further according as they authorize the citizens to positive activities, and here restrict the free scope of activities of the governmental organs. Personal freedoms of this type are e.g. the free choice of the domicile, the freedom of conscience and worship, in the sense that the citizens may profess any religious creed.

In the opinion of the present author the sphere of these freedoms also includes the right to property, which means the right to personal property for the satisfaction of personal needs, as defined by the constitution. (In the period of transition of socialist evolution this right extends also to the ownership of the means of production of small artisans, inasmuch as in conformity with the provisions of the constitution the State may transfer these means to public ownership only against an indemnity, or otherwise, the items of property may be transformed to collective property only through the agency of the cooperative movement.) However, a study of the related legal problems would go beyond the limits of this paper.

Another category of the personal freedoms include rights which for the protection of the individual citizen expressly set up barriers to the action of the governmental organs. Such rights are e.g. the right to personal inviolability, the secrecy of correspondence, and the inviolability of domestic privacy.

A *special* group of freedoms incorporate civic rights which are vested in the individual citizens, but can be exercised only by combined action. The most significant rights in this sphere are the right of combination, the right of assembly, the freedom of communication of opinion, within this the freedom of the press, and finally the sphere of the freedom of conscience and worship which attaches to the activities of the religious communities or churches as organizations rather than to the right of the individual citizen. These rights may also be called collective freedoms.

Beyond the said collective character these freedoms are characterized by that the citizen exercising them will step out of the sphere of state-organized social activities and will in a certain sense perform independent social activities. Owing to its organized character this type of activity has a great political significance. As a matter of fact the citizens with their organized social activities exercise an appreciable influence on public life as a whole, and even on the activities of the state organism. For this reason the conditions for the exercise of such freedoms are regulated by statutory definitions going into details, and simultaneously the government organs exercise a systematic tight control over them.²³

In this brief survey of the concept and nomenclature of the freedoms an important sphere of civil freedoms has been omitted, viz. the right of the citizens to the

²³ Recently the classification of civic rights has become a point at issue in socialist jurisprudence. Earlier the problems of the system of civic rights were little discussed; in general these rights were incorporated in the system of constitutions, or the classical tripartite division was accepted. The different authors distinguish several groups of civic rights, however, in general — unlike the present paper — merge the classical freedoms with the civic rights attaching to the operation of the governmental mechanism. [The question is discussed in detail by Kovács, I., *A szocialista alkotmányfejlődés új elemei* (New elements of socialist constitutional evolution), Budapest, 1962, pp 242–246.] Nearer to the position taken by the present author is that of the university textbook “*Magyar Államjog*” (Hungarian constitutional law, Budapest, 1964, p. 484). The textbook adopts the tripartite classification of the civic rights as outlined here, however, in the section on franchise, considers the rights attaching to the state organism — segregated from the classical freedoms — “political rights in a narrower sense”.

participation in the management of public affairs, and in the government of the State. As has been indicated earlier, in the period of bourgeois social evolution, at the end of the 19th century the extension of the sphere of the freedoms manifested itself in the transformation of civic rights deriving from the "people's sovereignty" into fundamental rights. Reference has also been made to the circumstance that in socialist evolution, dependent on the actual conditions, participation in the government has been realized essentially in two directions, viz. by the subordination of the whole governmental machinery to society, and by the assertion of the influence of the classes of society in different forms in the management of public affairs. A substantial portion of the rights through the help of which the citizens exercise their influence on the operation of the governmental organs, the control of social-political, economic, etc. activities, and on the management of public affairs (as obvious from the constitutions of a number of people's democracies), may today be defined also as civic rights. In these rights are included e.g. franchise, the right of complaint, the right of the population to participate in public activities, in the operation of governmental organs and in their control, etc. On scrutinizing the nomenclature of freedoms, the question may be asked, whether these rights could be conceived as civic rights, or a specific group of civic rights, or perhaps a recent extension of the sphere of freedoms?

As has been made clear on several occasions earlier, the "human rights" emerged in the period of the birth of bourgeois society as the limitations of state power. In this concept franchise had no room, not merely because only a relatively small group of society was enfranchised, but also because this right could hardly have been conceived as a limitation of sovereign power. The transformation of human rights to civic rights (to rights guaranteed to the citizens by the sovereign power) opened the gate to the notion of these rights as civic rights. However, besides civic equality only the freedoms conceived as the limitations of the sovereign power were recognized and thus the rights associated with the exercise of power could be entered only as a new, special group of rights on the catalogue of civic rights. The intrinsic contradictions of the bourgeois social system expressed themselves in the class limitations of the political rights, so also in franchise. Consequently the fundamental character of these rights, as being the legal due of all citizens, did not even come into consideration.

According to the socialist construction civic rights attaching to the activities of the government organs signify the method of exercising sovereign power. These rights are closely tied up with the enforcement of socialist representative democracy, and in the present stage of socialist evolution may be interpreted as civic rights. In socialist practice the rights associated with the definition of collective freedoms and the activities of governmental agencies are organically interlocked and interdependent. E.g. social organizations relying on the freedom of combination directly or indirectly participate in the implementation of governmental functions, exercising a marked influence on political, economic, and cultural activities. In this sense these social organizations, as the agencies and representations of certain groups of workers, in respect of their specific interests, are

important institutions in the implementation of socialist democracy. Among others the freedom of the press materializes through the activities of the social organs, etc. This is such a close correlation, and in the political system of socialist society embraces the activities of the governmental organs and social organizations into such an organic unity that without the positive activities of the social organizations the creation and operation of the state representative organs are inconceivable. E.g. in the people's democracies elections are held with the cooperation of the organs of the Popular Front. The committees of the Popular Front organize the reports of the members of assembly to their constituents, the work in the constituencies, take charge of a variety of public functions in the joint organizations of the governmental and social organs.

However, this close correlation of the civil freedoms and the activities of the sovereign representative organs does not justify the construction of the civic rights attaching to the functioning of the governmental system as freedoms. It is the common trait of the enforcement of collective freedoms and the operation of representative organs, that both depend on the organized political activity, then of society, viz. the exercise of power. However, if it is agreed that the freedoms, and within them, the collective freedoms, at the same time set up legally defined barriers to governmental activity, the social and state institutions, representative organs, etc. called for the enforcement of socialist democracy, as well as other civic rights involved in the enforcement of democracy, will be of a different character even when these may be formulated also as the rights of the individuals or citizens.

From what has been set forth above it also follows that these civic rights, such as franchise, the right to recall members of the legislation, the right of participation in the civil service, etc. — in general rights attached to the operation of governmental organs — cannot be excluded from the nomenclature of civic rights, in particular when it is borne in mind that the rights granted by the State to the citizens are today in general considered civic rights. Though of course not all of them can be conceived as equivalent and uniformly enforceable civic rights. E.g. franchise should be recognized as civic right unconditionally, whereas the right of participation in the civil service, or the management of economic affairs cannot at the present stage of political evolution be realized as individual rights in the same sense.

It follows therefore that the said civic rights attached to the functioning of the governmental organs (the exercise of franchise and the right to recall members, participation in administrative functions, etc.) cannot be incorporated in either of the groups of citizens' rights. As seen from recent constitutions, in the course of socialist evolution the sphere of these rights is expanding and their significance is growing. It follows that their incorporation in the socialist catalogue of civic rights requires further, thorough study.

At the first glance there is no obvious difference between the socialist constitutional catalogue of freedoms, and their definition by the bourgeois constitutions. However, a closer look will reveal the essential differences.

The similarity between certain forms of constitutional definition follows from that the sphere of the freedoms shows certain common traits in every state like society, as was pointed out also by Engels. However, the fundamental differences in the class content of the states of various types will result in differences in the concept of freedoms; and what is more: introduce differences in the content of their actual implementation. The exploration of these differences of content requires a closer study of the major freedoms.

(a) In a socialist society the guarantee of the *right of combination and assembly* of the citizens is of particular significance. This is obvious, since the working class and its allied classes can only enforce their will in an appropriate organizational form and by making use of certain institutions. The classics of Marxism-Leninism in their first political document of importance, in the Communist Manifesto, emphasized that in the bourgeois society only an organized working class can withstand the economic and political power of capital. In the early stage of the evolution of socialist state the enforcement of the rights of combination, organization and assembly had a major role in the acquisition of power. In the present stage, the organization of society in association is gaining in importance, inasmuch as the association of the citizens are gradually taking charge of functions earlier entrusted to governmental organs. It is therefore not merely accidental that the socialist constitutions attribute a growing significance to the enforcement of the rights of combination and assembly of the citizens, and the expansion of their guarantees.

The birth of the right of combination dates back to the liberal period of bourgeois society. The Declaration of Human and Civic Rights of 1789 omitted to declare either the right of assembly or the right of combination. The right of assembly made its appearance in the French Constitution of 1791, however, the right of combination was still missing. This followed from the concept of the bourgeois state according to which the State expressed the general will, and at the same time was also its embodiment. Under such circumstances the private associations of the citizens were believed to be dangerous. The Le Chapelier Act approved during the Revolution, in 1792, e.g. expressly put a ban on the formation of associations or societies, and existing ones were dissolved. The purpose of these measures was not exclusively to bring to a halt the Revolution (although the said law explicitly aimed at setting up barriers to the organized influence of the toiling masses), in fact the prohibition of the formation of various associations or societies was explained by the claim of equality in all spheres of public life. According to this concept when layers of society united by a community of interests were allowed to combine in associations, and to assemble, their weight might grow, a circumstance which could not be reconciled to the contemporaneous bourgeois concept of the equality of rights.

The Belgian Constitution of 1831, and the French Constitution of 1848 already declared the right of combination, and made it a civic right. However, this right received general recognition only in the second half of the 19th century. The right of combination as one of the bourgeois fundamental rights, eventually

manifested itself in the creation of a variety of political parties and associations, and of economic and cultural organizations. At the same time the workers' fighting for their independent organizational framework exercised an appreciable influence on the general political and legal recognition of the right of combination.

In the bourgeois constitutions the definition of the right of combination is distinguished by more or less the same traits as the definition of the freedoms in general: i.e. the constitutions declare this freedom, and at the same time outline its limitations. The State does not actively cooperate in the promotion of the enforcement of the right of combination. All the State does is to refrain from obstructing the activities of its citizens to form and operate associations within the framework of the constitution, and other enactments. In this concept the rights of the State have the function of guarantees which prevent the creation and operation of associations conflicting with the ends of the State, i.e. illegal associations. The freedom of forming associations or societies and the statutory limitations of their activities vary by state. Essentially this freedom and its limitations are determined by the given class relations, the degree of economic, cultural, etc. development of the state in question. Formally the bourgeois state does not consider the formation of social or economic associations or organizations, and their sponsoring, as its function. It does not interfere in their independent sphere of activities as long as these are in accordance with the statutes, and merely supervises these activities. However, as borne out by practice, the State extends its assistance in different forms and by various means (political, financial, moral, etc.) to organizations serving the reinforcement of the bourgeois social and state order, and at the same time obstructs, or explicitly prohibits, the formation of organizations whose end is to change the bourgeois social system and to attain social and political objectives expressing the interests of the toiling masses.

As has been pointed out earlier, the socialist constitutions — in accordance with the class character of the State, — declare the right of assembly of the citizens in association with the exercise of state power, and do not conceal the class character and class objectives of the State. As a matter of course the socialist State, too, defines the legal and political limitations of the freedom of combination. It will e.g. prohibit organizations or associations whose purposes are conflicting with the targets set by the socialist State. With the evolution of the socialist system the organizational and legal forms and guarantees of the enforcement of the right of combination gain in volume, and through the agency of various social organizations or associations large layers of the citizens become engaged in political, economic, cultural, etc. duties. The social organization most essential for the execution of sovereign power, and embracing the great masses, are specially mentioned in the socialist constitutions. However, at the same time the right of the citizens is guaranteed to form other social-cultural associations or societies.

When now the spheres of the right of combination as defined by the constitutions of the people's democracies are analysed, then it will be seen that these spheres will correspond to the particular stage of evolution of democracy. A few constitutions promulgated in the first period of the democratic evolution declared

the right of combination of the citizens in a general form, without, however, defining the legal and political limits of the exercise of this right (the Polish and Albanian Constitutions of 1947).²⁴ Another group of constitutions of this first period laid down the legal and political limitations of the right of combination as known from the bourgeois constitutions (the ends and activities of associations must not violate public policy, the governmental or legal order, etc.). The constitutions of some of the countries at the same time defined the political limitations of the right of combination. E.g. the Bulgarian Constitution of 1947 puts a ban on associations whose activities violate the public rights acquired in 1944 (Article 87). The Rumanian Constitution of 1948 specially emphasizes the prohibition of the formation of Fascist or anti-democratic associations (Article 32). The constitutions introduced in the second period of popular democratic evolution, with certain differences dictated by the actual conditions existing in the country in question, declare the right of combination of the citizens. The constitutions of some other countries, similarly to the Soviet Constitution of 1936, do not specify the limitations of the right of combination separately, whereas the constitutions of other countries specially emphasize that the exercise of the right of combination should be in harmony with the governmental and social system (Constitution of the German Democratic Republic, the Polish Constitution of 1952, and the Yugoslav Constitution of 1963).²⁵

The foundation of the right of assembly has been defined by Article 56 of the Constitution of the Hungarian People's Republic as follows: "(1) The People's Republic of Hungary in order to promote the social, economic and cultural activities of the workers safeguards the right of combination. (2) The People's Republic of Hungary relies in the discharge of its functions on the organizations of the conscious workers. For the protection of the popular democratic order, the growing participation in the construction of Socialism, the extension of cultural-educational work, the enforcement of the people's rights and the cultivation of international solidarity, the workers organize trade unions, democratic associations for women and the youth, and other mass associations, and combine their forces in the democratic Popular Front. In these organizations the close cooperation and the democratic unity of the industrial, agricultural, and intellectual workers will be realized. The working class relying on popular democratic unity and guided by its vanguard, is the leading force of governmental and social activity."

It is obvious from the socialist constitutions, and so also from the Hungarian, that the provisions referring to the socialist right of combination go beyond the right of combination of the citizens of the traditional interpretation. In Para (2),

²⁴ Article 24 of the Constitution of Albania of 1946; the Polish Declaration of the 22nd February, 1947 on civic rights and freedoms.

²⁵ Articles 12 and 13 of the Constitution of the German Democratic Republic of 1949; Article 72 of the Polish Constitution of 1952; Article 40 of the Yugoslav Constitution of 1963.

Article 56 of the Hungarian Constitution e.g. by the side of the governmental organization, the outlines are laid down of a social mechanism to which important functions are assigned in the political system of society. The legal consequences of this article are exposed in Decree-Law No. 18 of 1955 on the associations. Accordingly this decree-law does not cover the activities of the large mass organizations (Popular Front, trade unions, youth federation and democratic women's movement) defined by the Constitution. The decree-law only governs the organization and legal conditions of the formation and activities of other associations of the citizens. It follows therefore that governmental organs have no supervisory power over the mass organizations of society. These organizations are considered autonomous in their structure and activities; their statutes require no approval by government organs, etc. As regards the functions and the activities of the large mass organizations no further statutory provisions have been introduced beyond the provisions of the Constitution.²⁶ This also means that these provisions of the Constitution in first order have a social and political significance, because they relate to institutions and organizations discharging almost governmental functions. The Constitution has made it the obligation of the governmental organs to rely on these organizations in their operations. The latter — within the provisions of the rules of law — are equal in rank with the governmental organs in their activities.

In connection with these another problem emerges in the sphere of the right of combination. Namely, what construction should be given to the recurring provision of the Constitution, that the party of the workers is the guiding force of political and social activities? The social-political guiding function of the Marxist party of workers follows from the actual position acquired by the party in the organization and exercise of power, from the essence of the political system of socialist society, and not from theoretical or legal considerations. The guiding role of the Party asserts itself partly through its members active in the various governmental and social organs, partly in the guiding principles and resolutions relating to the most important issues of governmental activity. The resolutions and guiding principles are based on sound scientific foundations, and are drawn up not only by party members, but also by the representatives of the various social organizations and experts.

A fundamental thesis of Marxism-Leninism relating to the political mechanism of socialist society is that the Party and its organizations are not integrated into the hierarchy of the governmental organization. This also means that Party resolutions have no binding force under constitutional law on either the citizens or the governmental organs. The guiding role of the Party finds expression in that its resolutions are binding on the members, qua members, and not qua citizens, and this guiding role asserts itself through the activities of the Party members in the

²⁶ This of course does not mean as if the rights of the trade unions relating e.g. to labour contracts, conditions of work, etc. were exempted from the rules established by legislation. What is important to note is that these rules do not apply to the internal operation of the trade unions but to their rights in respect of state companies and government organs.

governmental organs, by the methods of conviction.²⁷ For the interrelation of the Party and governmental organs the same rules apply as for the social mass organizations. In this sense the Constitution defines the guiding role of the Party without the intention to guarantee it by legal means.

The other group of social organizations established by virtue of the right of combination of the citizens include the associations governed by the Decree-Law on Combination. The legal framework of the formation, organization and operation of these associations are defined, subsequently to the Decree-Law on Combination, by Act IV of 1959, the Hungarian Civil Code.

The legal position of the associations governed by the Civil Code are defined by the following principal provisions:

(1) The citizens may form associations whose purposes are in harmony with the social, economic and cultural purposes of the popular democratic society, and whose operation does not conflict with the rules of law.

(2) The associations have to draw up statutes, as a condition of their registration. Registration is merely an administrative act, no other authoritative permit being required for the creation of associations.

(3) The Decree-Law on Combination defines the principles of the operative order of the associations. E.g. the executives of an association are elected by the general assembly of the members, and are in every respect subordinated to the general assembly. In matters of principle (the budget, dissolution of the association, merger with other associations, etc.) only the general meeting can decide. These problems have to be settled by the statutes of the association in conformity with the provisions of the Decree-Law on Combination.

(4) The associations are legal entities, may have assets, and may be subjects of civil law transactions.

(5) Associations may build up local organizations and form federations of associations.

(6) Supervisory functions over associations are exercised by the competent state executive organs. Supervision extends to the statutory operation of the association, the observance of its own statutes and of the provisions governing the administration of assets.

A third group of social organization is formed by associations whose relations to the governmental organs are governed by special legislation. Organs of this type are the Hungarian Academy of Sciences (Decree-Law No. 24 of 1960),

²⁷ During the period of the cult of personality several errors were made in the judgement of the guiding role of the Party. Consequently, after 1956, the Hungarian Socialist Workers' Party took a stand on the problem on several occasions. So e.g. the VIIIth Congress of the Hungarian Socialist Workers' Party passed the following resolution in the matter: "The Party resolutions are the vehicles of the principles and measures guiding the practical work of socialist construction. The Party directs political, economic and cultural work, still not by resolutions binding upon the political and social organs. The Party resolutions bind the communists working in these organs." (Minutes of the VIIIth Congress of the Hungarian Socialist Workers' Party, Budapest, 1963, p. 459.)

the Hungarian Red Cross (Decree-Law No. 25 of 1955), the voluntary communal fire brigades, and the training and sporting movement, etc.

Finally, certain organizations of a social character differing from the above are formed in the sphere of governmental and administrative organs. These are formed expressly to assist in the performance of administrative acts. Such are e.g. the tenants' committees, the voluntary police, the workers' militia, the various committees created by the side of local councils and their specialized agencies, etc.

The system of social organizations in the People's Republic of Hungary has been reviewed in detail to indicate that the right of combination of the citizens is practised in a way fundamentally differing from that of bourgeois society. As has been pointed out, in socialist society social organizations of various character are active. A large portion of these perform important functions in the exercise of sovereign power, and consequently their relations to governmental organs present characteristic traits other than the conventional bourgeois associations or federations.

The right of combination of the citizens defined by the socialist constitutions simultaneously guarantees that the citizens may also in this way participate in the direction of public activities and the exercise of state power.

This greater significance of the social organizations or associations in the political system of socialist society has been given expression in the constitutions introduced of late. E.g. the Czechoslovak Constitution of 1960 includes the right of combination of the citizens in the fundamental constitutional rules of the social order, by emphasizing that its enforcement guarantees the intensive participation of the citizens in communal and political life. As far as the evolution of the socialist state is concerned this is particularly significant because "the governmental organs delegate some of their functions gradually to the social organs" (Article 5). The Yugoslav Constitution of 1963 expressly places the realization of social self-government in the focal point of the entire constitutional system of society.

The right of combination is a fundamental civil freedom under socialist conditions. By practising this right the citizens may form various social organizations, however, the activities of their associations or federations go beyond the safeguard of the specific interests of persons, groups, or professions, and simultaneously constitute an organic part of the entire political activity. Accordingly the right of combination of the citizens, and the extension of the political and legal guarantees of its exercise are closely related also to the evolution of the state structure and political system. This enrichment of the right of combination finds expression in recent socialist constitutions by being declared a fundamental rule of the social system.

The right of assembly of the citizens, and the organizational and legal guarantees of its enforcement have been defined on approximately the same lines in the socialist constitutions. The only difference is that while in certain countries the organization and legal framework of the right of assembly is laid down in special rules of law, in other popular democracies no enactments beyond the provisions of the constitution have been introduced. According to the valid law of the Hungarian People's Republic e.g. social organizations, in like way as governmental

organs may convene meetings to discuss problems concerning society at any time, free of statutory limitations. The statutory provisions do not discriminate between meetings convened by governmental and social organs either as to the agenda of the meeting, or as to its participants. No preliminary permit is needed for the convention of the meetings of social organizations, hereincluded those of the various associations or unions. Meetings need not be reported to governmental organs, except when these have been convened in a public place.

There are no all-embracing enactments in force in Hungary as regards the convention of assemblies of another kind, only certain statutory provisions require a permit for processions or assemblies in a public place, for reasons of traffic regulations (Section 18 of the Decree of the Ministry of Home Affairs 2/1962 (IX. 29.). B.M.). Special rules require the notification of the authority of entertainments with programme, church processions, meetings of an international character.

(b) In all of the socialist constitutions, among the civic freedoms, *the freedom of opinion* occupies an important position. The notion of the freedom of opinion in general includes two civic freedoms viz. the freedom of speech and the freedom of the press. A peculiar trait of the freedom of speech is that the conditions of its exercise have not been specified with the same legal precision as those of the freedom of the press. As a matter of fact the oral expression of an opinion is more difficult to keep under control than the press, and the constitutional definition of its limitations would be extremely circumstantial. In general the constitutions define the freedom of speech of the citizens, whereas the legal and organizational limitations of its exercise have been laid down in the criminal codes. The statutory scope and limitations of the freedom of speech differ by countries dependent on the character of the social system, and the respective safeguards of the political freedoms. So e.g. in Hungary the statutory provisions limiting the freedom of speech move within narrow limits, and the number of punitive sanctions is relatively small. According to the Hungarian Criminal Code, Act V of 1961, the following offences act as barriers to the freedom of speech: incitement, instigation to war, insulting an authority or official person, spreading of disquieting rumours, libel and slander, insult, insult to a deceased or to his memory. These provisions as a matter of course act also as limitations imposed on the freedom of the press.

The enforcement of the freedom of speech of the citizens is to a large degree in contact with, and attaches to, the activities of social organizations.

The various organs of the press and means of communication (newspapers, broadcast, television) provide a wide social scope for the freedom of speech of the citizens.

For this reason the limitations of the freedom of speech are in every country governed by the enactments relating to publications (newspapers) and the operation of telecommunication equipment (broadcast, television).

The importance attributed to the freedom of the press in the period of the bourgeois revolutions is a well-known historical fact. From the first bourgeois

constitutions and by all subsequent ones this freedom was recognized and declared as a traditional freedom. In the period of bourgeois revolutions, the main target of the demand of the freedom of the press was the censorship of feudal absolutism. With the formation of bourgeois society and the intensification of its intrinsic contradictions, the social and political importance of the press and the conditions of the exercise of the freedom of the press were gradually drawn under legal regulation. Press policing came into being by stages. Simultaneously also the limitations of this freedom received statutory definition. The definition of the details of the legal conditions and limitations, of course, varied in its contents and extent, dependent on the character of the particular countries, and of their intrinsic social and political contradictions. It was the common characteristic of the statutory regulations that in these preferably the general legal conditions and limitations of the exercise of this expressly political freedom were laid down, and the courts contented themselves to safeguard the bourgeois political and social system by merely evoking the public policy.

The purpose of the socialist freedom of the press and the bases of its exercise were first defined by the Soviet Russian Constitution of 1918. The constitutional definition gave expression to the class content of the freedom of press and specified the conditions of its exercise: "In order to ensure the freedom of the true expression of opinion of the workers, the Russian Soviet Socialist Federal Republic terminates the dependence of the press on capital, and transfers all technical and financial means for the publication of newspapers, pamphlets, books, and every other printed matter and the circulation thereof to the working class and the poor peasantry, in the whole country" (Article 14 of the Constitution).

The provisions of the first socialist constitution governing the freedom of the press too gave expression to the class character of the new state, and laid down the actual conditions of the construction of the governmental and social system. In addition to the safeguards of the freedom of the press of a political character as defined by the Constitution of 1918, also the system of the legal guarantees took gradually shape in the course of the evolution of Soviet society. Owing to the peculiarities of popular democratic evolution the legal safeguards and limitations of the freedom of the press found an expression already in the constitutions of the initial period.²⁸

A whole system of safeguards and limitations of the freedom of the press was laid down e.g. in the Czechoslovak Constitution of 1948, which among others prohibits censorship. The constitution declared that the publication of newspapers, the conditions of the publication and circulation of books were subject to statutory regulation. Broadcasting and television, the motion-picture industry

²⁸ The constitutions introduced during the early period of popular democratic evolution in general declare the freedom of the press, however, do not specially define the political provisions or the legal guarantees relating to the exercise of this freedom (Albanian Constitution of 1946, Bulgarian Constitution of 1947, Polish Constitution of 1947). Part of the constitutions approved during the second stage of popular democratic evolution emphasize the guarantees of an economic character (Hungarian Constitution of 1949; Rumanian Constitution of 1952, and Czechoslovak Constitution of 1960).

and the circulation of films were made state monopoly, and exceptions could be granted by special statute only.²⁹ The Constitution of Yugoslavia of 1963 regulates the freedom of the press together with the freedom of information, and provides also for the conditions of rectifying statements: "The citizens are free to express and declare their opinion by way of the means of information, make use of the means of information for their own purposes, publish newspapers and other printed matter, and disseminate information by other means of information" (Article 40). However, this right cannot be made use of for the destruction of the democratic system defined by the Constitution, for endangering peace, international cooperation, or the independence of the country, for fomenting ethnical, racial, religious hatred, instigation to criminal acts.

The provisions of the constitutions of the early stage of popular democratic evolution governing the freedom of the press have been completed with detailed statutory provisions in most of the countries, and much has been added also to the system of statutory guarantees. The implementation of the freedom of the press, the conditions of the publication of printed matter have been included in special statutes e.g. also in Hungary. In addition to the political guarantees of the enforcement of the freedom of the press these statutory provisions define the system of legal guarantees in every detail, and within this also the rules of the publication of qualifying statements, etc.³⁰

In Hungary comprehensive press rules were introduced in 1959. The provisions of the Constitution of 1949 in first order defined the political guarantees of the freedom of the press. Earlier the conditions of the exercise of the freedom of the press were governed by various statutory provisions dating to partly before and partly after the Liberation of the country. The Government Decree No. 26/1959 was the first attempt in Hungary to bring under overall statutory regulation the guarantees of the socialist freedom of the press, and the conditions of the publication and circulation of printed matter. This was the reason that the first tentative step was made in the form of a government decree, and not of a law. As was pointed out by Hungarian forensic literature one of the deficiencies of the Decree was that some of its provisions still reflected traditional bourgeois policing principles, which under socialist conditions had lost their justification.³¹

A moot problem of the press regulation actually effective in Hungary derives from what is called the licensing system. As for its character and content, namely, this licensing system differs from what in bourgeois states is understood by the term licence. In bourgeois jurisprudence the licensing system essentially denotes the supervision of printed matter intended for publication from the political point of view. At the same time the effective provisions of Hungarian press law do not insist on the submission of the MS for the purpose of licensing. This is in charge of the competent specialized agencies or institutions of an economic character, and not

²⁹ Articles 18 to 22 of the Czechoslovak Constitution of 1948.

³⁰ Government Decree No. 26/1959 (V. 1).

³¹ *Ficzere, L., A szólás- és sajtószabadság* (The freedom of speech and of the press). *Állam- és Jogtudomány*, Vol. VII. No. 4. p. 620.

of the police authorities.³² Consequently these provisions governing licensing are not of a policing character, and rely on that the printing offices, publishing companies, etc. are in public ownership, and that governmental organs are in charge of the distribution of paper or newsprint. These administrative acts of the press law emerging in the course of organizational work are intertwined with certain limitations of a policing character.

The valid press law of Hungary grants exemptions from under the obligation of licensing certain publications from the subjective (publisher) and the objective side. Moreover, the organs responsible for licensing may grant still further exemptions. This is the case in particular with the publications of the social mass organizations. As a matter of fact, the licensing procedure as regards the publications of the social mass organizations is either wholly formal, unnecessary or in reality non-existent.³³

Besides the new operative licensing rules the rules concerning the publication of qualifying statement call for an amendment. Under effective regulations a qualifying statement is admitted only as far as questions of fact of the publication are concerned, whereas it is not admitted against critical remarks. In the event the publication of a qualifying statement is denied, the party concerned may go to law only in this sense.³⁴

To sum up: the conditions have matured in Hungary for bringing under statutory regulation the press law in such a way which would correspond to the sense and content of the freedom of the press conforming to the present stage of democratic evolution.

(c) There are appreciable differences between the bourgeois and socialist concepts of *the freedom of conscience and religion*. Essentially the bourgeois notion of the freedom of conscience and religion may be summed up in the sense that the State cannot interfere in the religious opinions of the individual man. Everyone may freely shape his religious outlook, free of public power, however, without injury to the religious creed of others. Consequently the executive power cannot bring the exercise of religion under regulation unless for reasons of public interest and to protect the religious freedom of the citizens.

Several obstacles were put up against the free exercise of the freedom of conscience and religion in bourgeois society. Among the many obstacles mention must be made of the feudal privileges of ecclesiastic organizations with historical traditions, in particular the Roman Catholic Church. These privileges did not only guarantee a high degree of social and political influence and power, but at the same time they became the tools of the Roman Catholic Church to act as the principal antagonist of the bourgeois political system, thus becoming the defender of the remnants

³² Section 5 of Government Decree No. 26/1959 (V. 1) and Sections 7 to 9 of Decree No. 4/1959 (VI. 9) of the Ministry of Cultural Affairs.

³³ *Ficzere, L.*, op. cit. pp 622—623.

³⁴ The experiences gained with the decree on press law have been summed up by *Benárd, A.*, in the study “A sajtójog új szabályozása a gyakorlatban” (The Recent Regulation of the Press Law in Practice). *Állam és Igazgatás*, 1960, No. 7.

of feudalism. It was for this reason that the bourgeois state in its struggle with the feudal class forces and institutions clashed with the Roman Catholic Church and her international organization. The compromises between the feudal layers of society and the bourgeoisie were expanded to compromises between the bourgeois state and the churches. Consequently the history of the freedom of conscience and religion, its evolution, were closely associated with the struggle of the forces of bourgeois society with the feudal institutions and the defenders of the remnants of feudalism, among these with the churches, in first order with the Roman Catholic Church.

It stands to reason therefore that the bourgeois notion of religious freedom, or the sense of its theses as laid down in bourgeois constitutions, cannot be defined unless in relation to the actual conditions existing in the various states. It is known e.g. that the various bourgeois revolutions went as far as to break off relations with the Roman Catholic Church, or Papacy, and to establish national churches. The political compromises accompanying the clashes in Europe in general led to the recognition of a state church.³⁵ Simultaneously the freedom of religion as being the due of each citizen, was supplemented by a regulation of the legal position of the churches as organizations. As the result of the "Kulturkampf", the struggle between State and Church, a separation of a certain degree was brought about between State and Church, with the simultaneous suppression or limitation of a number of privileges of the Roman Catholic Church. The clashes with the Church in the years before the First World War were concluded in the majority of the states with a variety of legal consequences which found expression in the differences existing among the provisions of the related bourgeois constitutions. The Pope, by recognizing the bourgeois state, desisted from fighting the political, social and economic system of the bourgeois states. As a set-off to this concession the states repealed, or amended some of their enactments directed against the Church, in the interest of a cooperation. The content of this compromise varied by countries.

This brief survey of the development of relations between State and Church may perhaps serve as an indication of the changes that have taken place in the bourgeois concept of the freedom of religion. What has been set forth so far was intended to reveal the two fundamental differences between the bourgeois concept of the freedoms of conscience and religion, and their constitutional and statutory definition, and lastly, the socialist construction given to them:

³⁵ See also the evolution of the English bourgeois revolution. Yet the same characteristics may be discovered in the French Revolution, when the dioceses were mapped out by the state authorities (Law of the 12th July, 1790). The "Constitution" of the Church was formulated by the Government in 1790; also the eligibility of church dignitaries was declared. In France the first Concordate with the Pope was signed by Napoleon (then First Consul) on the 15th July, 1801. Accordingly the new bourgeois state recognizes the Pope, in return the Pope recognizes the new State, renounces confiscated Church property for the benefit of the new proprietors; the financial position of the Church changes. From this date the freedom of conscience ceased to be a simple personal freedom. In the sphere of the notion of freedom of conscience at that time also the legal position of the Church began to manifest itself.

First, the ideas carrying the bourgeois transformation of society have not come into conflict with religion as an ideological outlook, therefore the compromises entered into with the churches are political as well as ideological. At the same time the socialist political and social system expressly relies on the materialist conception of history and is opposed to the religious outlook. For this reason compromises can be entered into between the socialist states and the churches only on the political plane, but never on the ideological.

Secondly, whereas even the most radical bourgeois approach of the problem merely declares the passive role of the State in the enforcement of bourgeois freedom of conscience and religion, and considers an outlook relying on religion a private affair at most, the socialist state built upon the basis of a materialist conception teaches the propagation of the socialist outlook to be one of its functions, and at the same time endeavours to thrust back the remnants of the religious outlook with the help of science.

These remarks may already offer an idea of the socialist concept of the freedom of conscience and religion. Accordingly the socialist state applies no coercive measures against the citizens professing religious ideas, it allows the free exercise of religion, yet with the organizational and educational facilities and institutions of the State propagates the scientific, materialist ideology and fights with the weapons of science against religious doctrines, but never against men professing religious ideas.

Similarly to the obstacles put up by the churches against the bourgeois revolutions and to the formation of the bourgeois social system, the socialist revolution, and the construction of the institutions of the socialist system too encountered the political obstruction of the churches. As taught by the history of the evolution of the socialist state, the churches often undertook the role of the last organizational base of the counter-revolution. The constitutional definition of the practice and safeguards of the freedom of conscience and religion was of course influenced by these political struggles. The socialist states engaged in the gradual development of the institutions of the new social and political system signed agreements with the various churches, and these compromises also had an influence on the constitutional and legal formulation of the freedom of conscience and religion. Essentially the socialist constitutional provisions guaranteeing the said freedoms of the citizens bear the following common characteristics:

- (1) Citizens have equal rights irrespective of their religious creed.
- (2) Religious ceremonies and worship are free, and may be attended by everybody, however, nobody may be forced to attendance.
- (3) The socialist state carries the separation of State and Church into effect; this means that the churches can take charge of no public functions, and that their functions extend only to duties associated with worship.³⁶

³⁶ It should be noted that some of the constitutions of the people's democracies have failed to expressly declare the separation of State and Church, although in reality this separation has been carried through.

(4) The majority of the socialist constitutions declare that the churches cannot interfere in politics, nor can abuse their influence for political purposes. These provisions of the constitutions are intended to prevent the churches from exploiting their religious influence for propaganda activities directed against the socialist political and social system, or from fostering subversive activities.

(5) The constitutions do not declare the equality of rights of the churches expressly, still this may be formulated as a constitutional principle.

(6) Finally the constitutions declare the freedom of both religious and anti-religious propaganda.³⁷

Actually among the socialist countries there are differences in the regulation of church property. In the Soviet Union where the political clash between State and Church was fiercest, after the Revolution church property was secularized and transferred to national ownership. Churches can have no property, they have no corporate rights. In the people's democracies the churches have lost their economic influence owing to nationalizations extending also to church property. However, property not affected by nationalization is still being held by the churches. Their corporate rights are still recognized by statutes.

Another essential difference in the constitutional regulation of the freedom of conscience and religion is in the provisions relating to school education. The Soviet Constitution declares the separation of the churches and schools. In the people's democracies the schools, among them ecclesiastical schools, have been transferred to state control, however, in certain countries, so e.g. in Hungary under special agreements signed with the churches, these still own a few public institutions of learning.

In the enforcement of the freedom of conscience and religion of the citizens the same tendencies prevail in the People's Republic of Hungary. The political instruments published in the initial period of popular democratic evolution in general define the requirement of enforcing the freedom of conscience and religion. Act I : 1946 on the constitutional form declares the guarantee of the freedom of conscience and religion. However, no comprehensive legislation was introduced for the enforcement of these freedoms until the year of change (1948). Immediately after the Liberation the discriminative legislation of Fascism was repealed. The young people's democracy owing to the extremely intricate social and political conditions, where efforts were made to reinforce the anti-Fascist Front, and to concentrate the forces of society on economic reconstruction, made it its policy to avoid the political clash with the churches, in particular with the Roman Catholic Church whose leaders openly followed counter-revolutionary ends.

Freedom of conscience and religion, together with the civic implications of these freedoms, could be realized only in the second period of popular democratic

³⁷ It should be noted that the majority of the people's democracies, together with pronouncing the principle, have introduced rules for the method of anti-religious propaganda. It should be noted further that the constitutions of the people's democracies, in particular of countries where the citizens holding religious ideas belong to several denominations, prohibit fomenting religious hatred or religious intolerance.

evolution, when the unity of popular democratic society consolidated, and the influence of the churches on the citizens began to dwindle. Measures introduced in these years elicited the political resistance and the counter-revolutionary activities in particular of certain leaders of the Roman Catholic Church.³⁸ The political struggle was eventually terminated by agreements signed between the popular democratic state and the churches.³⁹ In the wake of these agreements, and after the introduction of the Constitution of 1949, and in the spirit of it, the statutes governing the exercise of the freedom of conscience and religion were promulgated. The more significant of these are Decree-Law No. 5 of 1949 on optional religious instruction at school, Decree-Law No. 34 of 1950 on the dissolution of religious orders and congregations and the licence granted to certain teaching orders in Catholic schools; Decree-Law No. 20 of 1951 on the governmental approval of the appointment certain church dignitaries and holders of church offices.

From these statutory provisions it appears that not even in this period of popular democratic evolution were there rules promulgated purposing the dissolution of the ecclesiastical organizations, the establishment of the system of state supervision, the removal of church dignitaries from their offices. In this respect Act XLIII of 1895 introduced as the termination of the struggle between Church and State is still valid. Although the provisions of this statute are to a certain extent antiquated and do not fit into modern requirements, the socialist state nevertheless does not consider its amendment necessary. In fact the present constitutional and statutory regulations provide the appropriate legal framework for the enforcement of the freedom of conscience and religion of the citizens in the socialist sense.

In Hungary the churches are subsidized from budgetary means. The sum and form of the subsidies are laid down in the agreements signed between the State and the churches. Actually besides the five large churches there are about ten smaller religious denominations in Hungary.

The practice of the freedom of conscience and religion of the citizens, notwithstanding certain common traits, shows essential differences between the respective bourgeois and socialist concepts. Substantially the fundamental differences in the social system, the political and social relations influence the constitutional formulation of the freedom of conscience and religion, and its legal guarantees.

³⁸ The approved rules of law in first order repeal Fascist legislation. So in March 1945 Government Decree No. 203/1945. M. E. was promulgated, which repealed the discriminations affecting the Jews and the Jewish religious communities. Essentially Govt. Decree No. 6/270/1945. M. E. was intended as a similar correction, as it restored the rights of religious denominations dissolved by virtue of Section 3 of Act XVII : 1938. Act XXXIII : 1947 abolished the distinction between established and recognized Churches. The Decree No. 600/1948 of the Supreme Economic Council abrogated the collection of parochial taxes by State authorities, etc.

³⁹ The political struggles of this period are reviewed by *Orbán, S., Egyház és állam 1945—1950 (Church and State, 1945—1950)* (Budapest, 1962, pp 35—131); agreements were signed with the Calvinist and Unitarian Churches in October 1948; with the Lutheran Church and the Jewish communities in December 1948; and with the Roman Catholic Church in August 1950.

(d) In the socialist nomenclature of civic freedoms *the personal freedoms* constitute an important item. Of the socialist constitutions first the Soviet Constitution of 1936 declared the personal freedoms, viz. personal inviolability, secrecy of correspondence, and the privacy of the home.⁴⁰ The historical evolution of the sphere of personal freedoms, and the subsequent changes of their contents, have been discussed earlier. Undoubtedly there are certain common elements in the constitutional definitions of the personal freedoms in both the socialist and bourgeois constitutions. As a matter of fact even under socialist conditions personal freedoms come into prominence also primarily as the legal guarantees of the protection of the individual citizen against the encroachments of governmental organs. I.e. even under socialist conditions personal freedoms stand as barriers to the exercise of state power or the activities of governmental organs.

Apart from a few differences dependent on the historical traditions of the particular countries and their actual social and political evolution, the socialist constitutional definition of the personal freedom of the citizens has essentially been realized within the said framework. However, there are certain differences in the constitutional nomenclature of the personal freedoms. Every socialist constitution declares the personal inviolability of the citizens, the secrecy of correspondence, and the inviolability of the home. At the same time the Czechoslovak constitution of 1948, that of the German Democratic Republic of 1949, the new Czechoslovak constitution of 1960 and the Yugoslav constitution of 1963 specially declare the freedom of the choice of the domicile. Some of the constitutions introduced during the first years of popular democratic evolution declared the prohibition of internment and deportation (the constitutions of Albania and Yugoslavia, both of 1946). In addition to these the Constitution of the Yugoslav Federal Socialist Republic of 1963 declares the prohibition of exile to abroad, and the inviolability of life (Article 47). Another trait of the various socialist constitutional definitions of the personal freedoms is the want of uniformity. The constitutions of some of the countries enumerate the freedoms within this sphere (the constitution of the German Democratic Republic of 1949, the Hungarian constitution of 1949, the Polish constitutional declaration of 1947), whereas in other socialist constitutions also the guarantees of the personal freedoms have been detailed.

The Hungarian constitution of 1949 declares the right to personal freedom and inviolability (Article 57). Exceptions from under the prohibition of depriving a person of his personal freedom are mostly included in laws and decree-laws. Such exceptions are e.g.

(1) imprisonment as specified by statute and meted out in course of lawful procedure for a criminal act;

⁴⁰ The growth of the catalogue of personal freedoms is extensively described by Rácz, A., in his study "Az állampolgárok jogai és kötelességei" (Rights and duties of citizens) in *Az Állampolgárok alapjogai és kötelességei* (Fundamental rights and duties of the citizens), Budapest, 1965.

(2) preliminary remand for a crime which under the law entails imprisonment; in cases specified by clause (1) of Section 120 of Decree-Law No. 8 of 1962, i.e. (a) the identity of the culprit caught in the act spot cannot be established, (b) the person under charge has escaped, or hidden himself before the authorities, or owing to the gravity of the crime of which he is charged, there is reason to fear his escaping or hiding himself before the authorities; (c) there is a valid reason to assume that when at large the person under charge might frustrate or aggravate the clearing up of the criminal act; (d) when the person under charge has committed another criminal act during the procedure, or there is reason to fear that when at large he might carry out the criminal act attempted or prepared by him, or commit a further criminal act; (e) leaving the person under charge at large might disturb public peace, owing to the character of the criminal act;

(3) custody of the person suspected of the criminal act when this is necessary for the discovery of the criminal act (Section 108 of Decree-Law No. 8 of 1962);

(4) confinement of juveniles in a home of correction (Para (1) Section 91, of Act V : 1961);

(5) in the event of the conversion of a fine into imprisonment for reason of non-payment (Para (1) Section 47, of Act V : 1961);

(6) forced therapeutic treatment at an institution decreed by the criminal court (Section 61, Act V : 1961);

(7) conversion of a fine for petty offences to custody for reason of non-payment, and for certain petty offences the infliction of custody by the magistrate.

In general the definition of *the inviolability of domestic privacy* in the socialist constitutions is of a declarative character. Those constitutions which define this freedom in detail expressly permit the establishment of exceptions by special legislation. Also the constitution of the People's Republic of Hungary declares the inviolability of domestic privacy (Article 57), however, the factors constituting the offence of violation of domestic privacy have been specified only in Section 263 of Act V : 1961 (the Criminal Code). Accordingly whoever, without lawful reason, enters or remains in the home, other premises of another or an enclosure belonging to such home or premises without the consent of the tenant or occupant or by deceit, whoever obstructs or prevents another from entering his own home, other premises or enclosure belonging to such home or premises, shall be punished . . . These statutory facts permit the entry of a private home only when proper cause can be stated. A domiciliary visit (search) is permissible when there is proper cause that this measure may bring about the seizure of the perpetrator of a criminal act or the discovery of evidence (Section 151 of Decree-Law No. 8 of 1962). For a domiciliary visit a search warrant of the investigating authority decreeing it is required. No warrant is required when (a) delay might constitute a risk; (b) the person caught in the act has escaped, or a person under charge has to be caught whose remand has been decreed; (c) the domiciliary visit is made to prevent a criminal act from being committed (clauses (1) and (2) Section 152, *ibid.*).

The socialist constitutions in general declare *the secrecy of correspondence*, still some of the constitutions extend this sphere to the inviolability of any com-

munications. Article 57 of the constitution of the Hungarian People's Republic declares the secrecy of correspondence. Under the Hungarian Criminal Code this secrecy extends to letters, sealed documents, telegrams, telephone conversations, or messages forwarded by any other means of telecommunication (Para 1, Section 265). According to Para (1) Section 83 of the Hungarian Civil Code (Act IV : 1959) this secrecy shall extend to any document of a confidential nature. The criminal Code does not mention exceptions from the secrecy of correspondence. However, according to Decree-Law No. 8 of 1962 (Criminal Procedure) the investigating authorities may in the course of investigation seize letters and telegrams still undelivered to the addressee by writ of the prosecutor in the event of an acute suspicion of a criminal act. Until the issue of the writ letters or telegrams may only be withheld.

Socialist law surrounds the enforcement of freedoms with a set of guarantees. The socialist constitutions specially emphasize the prohibition of the arbitrary deprivation of a person of his freedom, and defines the most important procedural guarantees thereof. These are: Imprisonment may be inflicted on a person only by the competent court having jurisdiction in the case, and only for a criminal act; the hearing in court is public and relies on the contest theory of trial, where the accused has the right to plead; presumption of innocence until the sentence has been pronounced. The person sentenced has the right to appeal. The judges are independent, and are subject to the law only. Justice may be administered exclusively by the courts of law. Only the court or the prosecutor may commit a person to prison, and only in cases specified by statutory provisions. A person may be arrested only by observing the statutory formalities, and only for a definite period. The sphere of the guarantees specified above differ in the particular constitutions, however, every socialist constitution contains the most essential procedural guarantees of the prohibition of the arbitrary deprivation of a person of his freedom, namely that justice is administered by the courts of law, the judges are at performing their functions independent, and the accused is free to plead in his defence.

The enumeration of the guarantees may still be continued, however, even so far it will be clear that this would be but a repetition of the universal guarantees which attach to all civic rights rather than an extension of the list of the special guarantees of personal freedoms. This at the same time reflects the undoubted fact that to recent date the system of the socialist constitutions stressed the universal safeguards of these rights, and gave expression to the special guarantees of personal freedoms through these safeguards. However, the trend of recent evolution points in this respect also to more accentuated differentiation, i.e. to a more detailed constitutional definition of the special guarantees of the personal freedoms.

It is characteristic of the present stage of evolution of civic rights that the socialist state surrounds the enforcement of these rights with a widening set of guarantees, while socialist jurisprudence displays many-sided theoretic exploratory work to complete the system of guarantees. A primordial demand is the extension of the constitutional definition of personal freedoms in a sense that the constitutions

appropriately reflect the evolution of civic rights in the socialist society. As far as the personal freedoms are concerned this means the separate incorporation in the constitution of such personal freedoms as the right to life and bodily integrity and the free choice of a domicile. From several quarters the demand has been voiced that the most important guarantees of the personal freedoms under substantive and procedural law should be taken up in the constitution itself, instead of giving them a statutory definition.

HUMAN RIGHTS AND INTERNATIONAL LAW

1. DEVELOPMENT OF INTERNATIONAL CONVENTIONS AND INTERNATIONAL ORGANIZATIONS FOR THE SAFEGUARD OF HUMAN RIGHTS

(1) From the notion of state sovereignty, or more explicitly, from the content of the territorial sovereignty of the state it follows unambiguously that each state has unrestricted freedom to determine the status of the population living in its territory. The state may define with its own laws, from a sovereign will, the rights and duties of its nationals, and even of non-nationals residing in its territory. The problem of "human rights", essentially implied in the method of regulating the status of the population residing in the territory of the state, remains, therefore, within the scope of the domestic jurisdiction of the state.

Still during the latter decades the problem of human rights shifted to the focal point of the interest of writers on international law. Amidst the horrors of the two world wars, the ravages of Fascism, and the mass suppression of human rights unprecedented in the history of mankind it became evident that there was a close connection between the safeguarding of human rights and international peace and security. In fact it stands to reason that any attempt to create the pre-conditions for lasting peace, at home, and among the states, was futile unless safeguards would be provided for the essential human rights. Thus, of necessity there arose the demand for an international regulation of the human rights.

In this paper first of all a survey will be offered of the efforts made so far to regulate human rights on the plane of international law, of the outcome of these efforts, and, secondly, the problems of international law will be outlined involved by such efforts at international regulation.

(2) Before the First World War throughout the 19th century the idea of a protection of human rights on the international plane, in both theory of international law and interstate practice manifested itself only in the form of an "intervention d'humanité". However, this sort of intervention was a pretext for an interference in the domestic affairs of the other states in the interest of the political ideas of the interfering state rather than an action for the safeguard of human rights.

Imre Szabó writes of this type of intervention as follows: "It is commonly known that with the catchword "intervention d'humanité" as early as the past century certain great powers interfered in the domestic affairs of certain Balkan states on the pretext to safeguard the human rights of denominational minorities. This incidental system of international intervention in the name of mankind, however, generally in the interest of the great powers, was superseded after the First World War by a system of the international control and safeguard of minority rights."¹

¹ Szabó, I., *Az emberi jogok mai értelme* (Modern concept of human rights). 1948, p. 82.

As a matter of fact in the Berlin Convention of the 13th July, 1878, on the emancipation of the Balkan states, there are already traces of provisions on certain fundamental rights of the population. Article V of the Convention reads as follows:

"A difference of religion or denomination cannot be brought forward against anybody for the sake of his exclusion, or incapacitation from the enjoyment of civic and political rights, holding a public office, appointment, and dignities, or the continuation of various trades or industries at any place.

The freedom of all faiths and their external practice is guaranteed for both citizens subject to Bulgaria and aliens, and no obstacles shall be put in the way of either the ecclesiastical organization of the various religious denominations or their relation to their spiritual superiors."²

Before the First World War only certain special conventions were signed for the safeguard of human personality. None of these pretended to be a comprehensive and exhaustive regulation of the problem of human rights on the international plane.

Such conventions were first of all the international conventions on the *suppression of slavery*. At first the fight against slavery manifested itself in the form of conventions directed against the slave trade rather than the abolition of the institution of slavery altogether. Rather than wishing to alleviate the actual situation of the slaves, the signatories to the conventions were led by the idea to reinforce their position in the struggle for the hegemony in the capitalist world market through the suppression of the slave trade.

The declaration of the Vienna Congress on the 8th February, 1815 prohibited the trade in Negro slaves.

In 1841, on the initiative of Britain, an international convention was signed on the suppression of slave trade. At that time Great Britain was interested in an extensive trade of cotton produced in her colonies, and was apprehensive of a competition which the cotton grown on American plantations tended by large numbers of Negroes carried off from Africa would have meant for her.

The prohibition was extended by the Congo Act of 1885, and a convention signed in Brussels on the 2nd July, 1890.³

Under the Brussels Convention an International Administrative Union was created, with headquarters in Brussels for fighting kidnapping and slave traffic. A so-called international maritime office was opened by the Union in Zanzibar, with branch offices organized in the critical zones of slave trade. However, neither did this convention abolish the institution of slavery.

Other conventions signed for the protection of human personality are those purposing the suppression of white slave traffic.⁴

² See also Articles XXVII, XXXV, and LXII of the Convention promulgated by Act VIII : 1879. (Whenever Acts or Decree-Laws are quoted in the following footnotes, they always refer to Hungarian enactments.)

³ Act IX : 1892.

⁴ Paris, 18th May, 1904 (Act XLIX : 1912); Paris 4th May, 1910 (Act LXII : 1912).

In these conventions the signatories undertook the introduction of domestic legislation which would impose an interdict on acts prohibited by the conventions. Essentially these conventions were not aimed at defining the scope of human rights under international law, but merely confined themselves to a coordination of the action of the signatories for an effective suppression of particularly dangerous acts extending over the territory of several states.⁵

Although the international conventions signed *in the 19th century and at the beginning of the 20th* were associated with the safeguard of certain rights falling within the scope of human rights, however, the idea of *a comprehensive definition of human rights under international law*, or even a demand for such a definition *did not emerge by far* during this period.

(3) A study of the history of the regulation of human rights under international law eventually permits the statement that there is a close relationship between the demand for the protection of human rights and the historic process of the emergence of progressive trends. The democratic development in international law during the latter decades, by itself only an element of the safeguard of human rights, undoubtedly unfolded itself in the wake of the struggles of the progressive forces. A decisive factor in the process of a democratization of international law was the victory of the Great October Socialist Revolution, the formation of the Soviet Union, the existence of which could not be ignored even by the victorious powers of the First World War.

So the idea of international safeguards of human rights came into prominence in a concrete manner already at the time the League of Nations was formed. However, the Covenant of the League of Nations contained no provisions for the protection of human rights, in fact this notion is not even mentioned in it.

During this period the progressive forces did not represent a power which might have compelled the victors of the First World War to concessions of any significance. However, the Great Powers could not ignore these tendencies altogether, so that the idea of the protection of human rights on the international plane was incorporated in certain articles of the Covenant, without, however, imposing explicit obligations on the signatories.

So Article 23 of the Covenant declares that the Members of the League of Nations "(a) shall endeavour to secure and maintain fair and humane conditions of labour for men, women and children . . ."

Clause (b) of the same Article contains concrete commitments as far as the mandatory territories are concerned. Accordingly, the Members of the League "(b) undertake to secure just treatment of the native inhabitants of the territories under their control".

During the period of the League of Nations the problem of human rights manifested itself in a concrete form in the *international protection granted to minorities*.

⁵ To a certain extent also the so-called Red Cross Conventions (Act XX : 1911, Act XLVIII : 1913) and the Conventions approved by the Hague Conference were associated with the protection of human personality.

The problem of an international protection of the minorities came to prominence after the First World War merely because with the delimitation of the territories of the states aligned in the Eastern region of Central Europe, from the Baltic down to the Black Sea and the Mediterranean, large numbers of the population were subjected to the domination of states formed by other nationalities. The primordial object of the protection of minorities was to stabilize the newly drawn frontiers, to create acceptable conditions for the minorities, to check tendencies aimed at their suppression or forceful assimilation. Essentially the purpose of the protection of minorities was to mitigate some of the disadvantages inflicted on individuals as the outcome of the redistribution of the world.

The rules of international law introduced for the protection of the minorities after the First World War failed to develop into universal rules of international law. In fact these rules were binding only on states newly formed after the War, or whose territory was modified, but not on all states.

Minority law created within these regional scopes had its roots in a variety of sources:

In the matter of the protection of the minorities *international conventions* were signed, which could be divided into two groups, viz.

(a) conventions signed between the new states, or such whose territories were extended, and the Principal Allied and Associated Powers, i.e. the independent *minority agreements*,⁶

(b) the peace treaties signed with the Central Powers, or the corresponding provisions of these.⁷

Declarations made by certain states before the Council of the League of Nations, in which they undertook to respect minority rights.⁸

As a matter of fact, in its first session the Assembly of the League of Nations, on the 15th December, 1920, in connection with the admission of further states to the League declared by way of a resolution that

⁶ Articles 1 to 11 of the Treaty signed with Poland in Versailles, on the 28th June, 1919; Chapters I and II of the Treaty signed with Czechoslovakia in Saint Germain-en-Laye on the 10th September, 1919; Articles 1 to 10 of the Treaty signed with the Kingdom of Serbia, Croatia and Slovenia, in Saint Germain-en-Laye, on the 10th September, 1919; Articles 1 to 11 of the Treaty signed with Rumania in Paris, on the 9th December, 1919; Articles 1 to 15 of the Agreement signed with Greece in Sèvres, on the 10th August, 1920; The Treaty signed with Armenia on the 10th August, 1920, which, however, became ineffective with the Treaty which Turkey signed in Lausanne, in 1923.

⁷ Articles 54 to 60 of the Hungarian Peace Treaty signed on the 4th June, 1920, in Trianon; Articles 62 to 69 of the Austrian Peace Treaty signed on the 10th September, 1919, in Saint Germain-en-Laye; Articles 49 to 57 of the Bulgarian Peace Treaty signed on the 27th November, 1919, in Neuilly; Articles 37 to 43 on the Turkish Peace Treaty signed in Lausanne, on the 24th July, 1923.

⁸ This declaration was made before the Council by Albania on the 2nd October, 1921; by Lithuania, on the 12th May, 1922; by Latvia, on the 7th July, 1923; and by Esthonia, on the 17th September, 1923. *Búza*, L. deals on pp 26 to 28 of his work "A kisebbségek jogi helyzete" (The legal position of minorities) with these declarations.

“... the Assembly requests that they (i.e. Albania, the Baltic and Caucasian states) should take the necessary measures to enforce the principles of the Minorities Treaties, and that they should arrange with the Council the details required to carry this object into effect.”⁹ (Recommendation adopted on the 15th December, 1920).

Note that in connection with the protection of the minorities special conventions were signed with special provisions for certain specific territories.¹⁰

The what are called minority agreements, further the provisions for the protection of minorities incorporated in the peace treaties used a wording on the whole uniform enumerating the rights the recognition whereof was binding on the state concerned. Part of these rights were well within the scope of general human rights, for which the population of the contracting countries as a whole qualified. That is, these were not minority rights in the strict sense of the term. So the agreements granted to all inhabitants, consequently also to aliens

- (a) the right to life and freedom;
- (b) the right of the free exercise of religion.

The minority agreements further dealt with the regulation of the question of nationality or citizenship, and declared that all citizens were equal before the law, and enjoyed the same civic and political rights.

The remaining sections of the minority agreements covered the minority rights proper, i.e. any rights to which the minorities were entitled for their specific racial, denominational, or lingual characteristics (the freedom of the use of their own language, the right of keeping schools or educational institutions, the right of using the minority language in public instruction, the support of the minorities from budgetary appropriations for educational or denominational purposes, or for charities).

The legal character of the obligations incorporated in the system of the protection of minorities may be summed up as follows:

- (a) the provisions for the protection of minorities were recognized by the contracting states as fundamental laws, i.e. the provisions were raised within the state to such a rank in the hierarchy of statutes which excluded the promulgation of regulations, or the application of administrative measures conflicting with these provisions;
- (b) the provisions as far as these applied to persons who were members of the minority, constituted international commitments, placed under the protection of the League of Nations. Such provisions, therefore, could not be amended unless by majority consent of the Council of the League of Nations;

⁹ Journal Officiel, Suppl. spéc., January 1921, p. 28.

¹⁰ A convention of this type is the one signed between Sweden and Finland, on the Åland Islands, and the one signed in Geneva on the 15th May, 1922, between Poland and Germany on Upper Silesia. Both conventions were signed under the auspices of the League of Nations, pursuant to the role of the Council of the League of Nations in the decision on the status of the Åland Islands, and the delimitation of the German and Polish shares of Upper Silesia.

(c) each member of the Council was free to call the attention of the Council to a violation of the undertakings under the agreements, or impending violations thereof;

(d) the Council was free to proceed, and to issue such instructions as it deemed appropriate and efficacious in the specific case;¹¹

(e) disputes arising from the minority agreement between the interested government and the Council, or any one of the members of the League of Nations could be referred to the Permanent Court of International Justice whose jurisdiction was binding, and against whose decision no appeal was allowed.

The protection granted by the League of Nations received a formal recognition from all members of the League in that the Council of the League of Nations, declared by way of a separate resolution, in respect of each agreement, that the agreement signed between the Allied and Associated Powers and the contracting state was placed under the protection of the League of Nations.

From what has been set forth above it appears that in the minority agreements the contracting states, within regional limits, undertook to guarantee certain universal human rights (i.e. the right to life and freedom, further the freedom of worship). However, the protection of the League of Nations extended to these only in so far as it was a case of the free exercise of these rights by the minorities.

Undoubtedly the provisions of international minority law prevented an open and brutal persecution of the minorities, yet failed to relax the tension between the interested states.

As regards the international protection of these rights, and the activities of the League of Nations in respect of them the following may be noted:

For hearing cases of a violation of minority rights the League of Nations introduced procedural rules which offered an opportunity to influential states in the League to dismiss complaints against the state violating minority rights.

Essentially the following procedure was established for hearing complaints of the minorities within the League of Nations:

The person or persons concerned were free to announce their grievances to the League of Nations, however, the Council did not discuss the grievance unless it had been submitted by one of the members of the Council. Most of the minority complaints were attended to by a committee in the course of a preparatory procedure. The committee was formed of three members of the Council under the chairmanship of the President of the Council. The function of this Committee

¹¹ This means that the League of Nations had powers to supervise compliance with the undertakings regarding minority rights. There were animated discussions within the League whether the powers of the League of Nations extended to general supervision, or only to a consideration of actual violations. In general the wider construction as exposed in the so-called Tittoni Report was accepted, according to which the League of Nations had a right of a permanent supervision of the totality of minority protection. (*Kraus, H., Das Recht der Minderheiten*, a compilation, Berlin, 1927, pp. 106—109. Quoted by *Szabó, I. op. cit.* pp. 82—83.

was to decide whether or not the complaint should be submitted to the Council. Before the committee the representative of the state against which the complaint had been directed appeared also. Often to prevent the case from being discussed before the Council in public, this representative would make a formal promise to remedy the grievance.¹²

Between 1929 and 1936 the minority complaints submitted to the League of Nations numbered 862, of these 381 had been dismissed on formal grounds, and only five were examined by the Council. However, not even in these cases was there a decision born which would have improved the situation of the minorities.¹³

If now the balance should be struck of the activities of the League of Nations in the matter of the protection of human rights, the statement may be made that although the *Covenant of the League* in certain provisions brushed the sphere of the notion of human rights, it was nevertheless *void of any concrete undertakings* for the safeguard of these rights.

The international system of guarantees within the League of Nations in connection with the minority rights *failed to produce the desired results*. In fact this system fell short of contributing to international peace and security by failing to truly enforce these rights.

However, even when in practice the international protection of the minorities proved a failure, the procedure of international minority protection was — from the point of view of the international safeguard of human rights — extremely instructive. Imre Szabó, in this connection writes as follows: "It became evident that constitutional safeguards of certain human rights could be introduced on uniform principles within a state by way of international conventions. It also became evident that for a category of these human rights a system of international supervision could be called into life. I.e. on principle it is not excluded that an international organization, still respecting the principle of national sovereignty, for a branch of the human rights recognizes the international interest attaching to the safeguard of these rights".¹⁴

The activities of the League of Nations were heavily branded by the fact that owing to the political conceptions of some of its members the League eventually proved impotent against Hitlerite Fascism: in the hope to come to terms with Fascist Germany the League threw away the chance to take the field for the safeguard of human rights in the interest of peaceful relations between the states.

For the sake of completeness it should be noted that under the auspices of the League of Nations certain specific international conventions aiming at the protection of human rights were actually born.

¹² The Tittoni-Report, resolutions of the Council of the 22nd October, 1920; 27th June, 1922; and 5th September, 1923 (published by the Secretariat of the League of Nations, pp 26—31).

¹³ German translation of a Russian textbook on international law, p. 137.

¹⁴ Szabó, I., op. cit. p. 83.

So the convention signed in Geneva on the 25th September, 1925¹⁵ set out to organize the international campaign for the liquidation of slavery. However, even this convention declared only that the signatories should terminate any forms of slavery "by stages and as soon as this can be done". Certain international conventions on criminal law signed at about this time were also associated with the protection of human personality. Conventions of this type were e.g. the one signed in Geneva on the 30th September, 1921,¹⁶ for the suppression of the traffic in women and children, and on the 11th October, 1933, on the suppression of traffic in women of full age.¹⁷

It was during the period of the activities of the League of Nations that under the watchword of the "humanization" of warfare on the 17th June, 1925 a Protocol was signed on the prohibition of the use of suffocating, poisonous, or similar gases, further of bacteriological weapons,¹⁸ and on the 27th July, 1929 a convention was signed on the amelioration of treatment of the wounded and sick in armies in the field and on the treatment of prisoners of war.¹⁹

(4) The creation of the International Labour Organization within the system of the League of Nations deserves special mention. The activities of this Organization were closely associated with the right to work so essential for the material safeguard of human rights. Even when Statutes of the Organization failed to decree the right to work in a clear-cut manner, still with the regulation of the conditions of work, in particular those of female and juvenile workers, it contributed much to the assertion of this right.

The formation of the International Labour Organization was justified by the peace treaties by declaring that the League of Nations had set universal peace as its aim, and this peace could not be attained unless it was based on social justice. Since, however, there were labour conditions which inflicted so great an injustice, misery, and privations on large masses of men, that the unrest arising from these may jeopardize the peace and harmony of the world, these conditions were to be remedied urgently.

However, in point of fact the formation and activities of the International Labour Organization were influenced by the interpenetration of two conflicting trends current within the capitalist states. The one trend had its roots in a permanent warfare waged by the labour movement in each country, and also on an international level, for better conditions of work. At the end of the 19th and the beginning of the 20th century the working classes fought out a growing number of concessions and also on the international level labour appeared as a better organized, and thus stronger class. Consequently the capitalist countries could not turn a deaf ear to demands for some sort of a regulation of labour conditions, of an international character. After the First World War the victorious powers had to reckon

¹⁵ Act III : 1933.

¹⁶ Act XIX : 1925.

¹⁷ Act XX : 1935.

¹⁸ Decree-Law No. 20 of 1955.

¹⁹ Act XXX : 1936.

with the spread of the effects of the Great October Socialist Revolution. With the creation of the International Labour Organization they made a pretence of having called into life a system which would be suitable for a peaceful settlement of the clashes between the workers and the capitalists. Essentially, capitalist interest made efforts to lull to sleep the revolutionary tendencies of their own working classes.

The other trend took shape when the chances of exploitation began to become limited, the rate of the expropriated surplus value could be raised within appreciably narrower limits only. Consequently, in the economic competition between certain capitalist concerns, and even between the countries that concern or country was thrust to the background which was forced to make greater concessions to labour as there the costs of production necessarily tended to rise. Most of the capitalist concerns and countries, in order to limit competition, made it their policy to employ workers on uniform terms of employment. The time had come when an international and uniform regulation of labour conditions became the common interest of capitalist enterprise.

There remains to investigate, how these two trends, i.e. the demands of the labour movement and the policy of capitalist enterprise to introduce uniform labour conditions were intertwining.

When labour movement grew strong enough in a country to win e.g. state-controlled social insurance, or a shortening of the working hours, then the capitalists of this country became interested in the introduction of similar measures in other countries. If this could not be achieved then their competitive superiority would have dwindled, or else they would have been forced to ignore the demands of labour, which in the given case might have entailed serious consequences for them. Scelle put it in a clear-cut form that when a state made the validity or recognition of an international labour convention dependent on the ratification of the same convention by another state, then this conditional ratification would express the tendency to achieve a certain balance in the field of international competition. I.e. that no state should be in a more preferential position as far as the regulations of labour conditions were concerned than another. So e.g., France refused to ratify the convention introducing the eight-hour working day signed in Washington in 1919, unless it was first ratified by the United Kingdom and Germany.²⁰

This interpenetration of the two trends outlined above did not of course mean a free-of-conflicts unity relying on a community of interests within the International Labour Organization. It was in fact an intertwining of two trends which resulted in the creation of an organization within which two antagonistic tendencies waged a permanent war against one another.

²⁰ Scelle, G., *L'Organisation internationale du Travail et le BIT* (International Organization of Labour and the International Labour Bureau), 1930, p. 178.

2. PROTECTION OF HUMAN RIGHTS AFTER THE SECOND WORLD WAR. SIGNIFICANCE OF THE CHARTER OF THE UNITED NATIONS

(1) The period of the Second World War marked a decisive turn in the history of the legal regulation of human rights. The horrors of the Second World War, the ravages of Fascism were accepted as adequate evidence of that Fascism — this extreme manifestation of imperialism — combined overtly the annihilation of human rights within the state with aggressive tendencies directed against the existence of other nations, and the wholesale contempt of the right of self-determination of the peoples. Historical events thus proved that there was a close relationship between the preservation of international peace and security and the safeguard of the right of self-determination of the peoples and of human rights. Consequently, the demand for the protection of human rights on an international plane manifested itself with a new facet.

Imre Szabó writes that "... developing, progressive international law makes efforts for the settlement of all problems which may jeopardize the peace of the peoples and international cooperation . . . , at the same time efforts have to be made with the means at disposal that the internal structure of the particular states should be such as to ensure the rights of the peoples, a life worthy of human beings, so that the pressure of inside discontentment and tension, which might be exploited by war-mongers, could be eliminated. The endeavour for the introduction of all-embracing safeguards of peace defines new tasks also for international law".²¹

Development in the protection of human rights and in their regulation on an international scale following upon the Second World War was adequately explained by the given historical events. The increasing activity of the masses under the impression of the experiences of the Second World War, the forceful thrust made by the progressive forces, the victory of the Soviet Union in the Great Patriotic War and her cooperation with the other powers in the struggle with Fascism, and recent expansion of Socialism, were as many factors which influenced this development in a favourable direction.

So the interrelation between the protection of human rights and the safeguard of international peace and security became the cardinal idea of the political settlement after the Second World War. This idea was reflected even by certain provisions of the peace treaties terminating the Second World War.²²

In like way the connection between the safeguard of world peace and the protection of human rights manifested itself in the Regulations attached to the four-power pact on the persecution and punishment of the principal war criminals signed in London on the 8th August, 1945,²³ whose Article 6, besides criminal

²¹ Szabó, I., *op. cit.* pp 156 — 157.

²² The relevant provisions of the Hungarian Peace Treaty are discussed below.

²³ Treaty Series, Vol. 82, p. 285.

acts against peace and war crimes declared "the crimes against humanity" to be also international criminal acts. According to Article 6/c of the Regulations crimes against humanity were murders committed among the civilian population before the outbreak of the War or during it, the extermination of civilians, their dragging into bondage, exile or other acts of cruelty against the civilian population, in connection with the criminal acts referred to in the Regulations,²⁴ the persecution of the population on political, racial, or religious grounds irrespective of whether or not such persecution was legalized by the domestic legal system of the state.²⁵

The recognition of this relationship is reflected by the Charter of the United Nations, this international organization created for the safeguard of international peace and security. So the promotion of the respect for human rights was made one of the fundamental objectives of the Charter.

Thus, after the Second World War the organization of the protection of human rights under international law came into prominence in its relation to international peace and security. Since in the international settlement of world affairs after the Second World War, further in the promotion of peaceful relations between the different states, the prominent part fell to the United Nations Organization, it so happened that the problems associated with the international regulation of the protection of human rights were to find their solution mainly within this Organization. For this reason, in the following, the problem of a definition of human rights under international law will be discussed in its relation to the activities of UNO.

(2) The precursors of the United Nations Charter were the statements and instruments drafted during the Second World War, which defined the programme of the Allied Powers for the period following upon the War.

(a) *In his message to the Congress of the 6th January, 1941, President F. D. Roosevelt* named the four freedoms on which in his opinion the world must be built after the termination of warfare. These four freedoms were the freedom of speech, freedom of religion, freedom from want, and finally freedom from fear. Of the four freedoms formerly the first two had received recognition. On the other hand the latter two amounted to a declaration of new principles which in fact were of an international character and were in connection with the relations of the peoples to one another. Their significance consisted in that these two principles brought peace into connection with the economic conditions of life, and seemed to indicate that international agreements for the safeguard of peace were insufficient by themselves. In fact a definition of the essence of safeguards was also of primordial importance, inasmuch as lasting peace relied on the assurance of adequate economic and political conditions.

²⁴ These are besides "crimes against humanity", "crimes against peace", "war crimes".

²⁵ Similar provisions were included in the Decree of the Allied Supreme Command of the 19th January 1946, on the impeachment of the principal war criminals.

(b) Article 3²⁶ of the *Atlantic Charter* published on the 14th August, 1941 referred to the right of self-determination of the peoples, its Articles 5 and 6 again indirectly referred to social and economic rights. The Atlantic Charter quoted these rights not in their relation to individuals, but in their relation to the cooperation of the various states. It promised the creation of an international system which would unconditionally guarantee these rights. As a matter of fact Article 5 of the Charter, in the interest of an improvement of the living conditions of the working classes, of economic advancement and social security, proclaimed economic collaboration.²⁷ Article 6 spoke of the coming peace, of the peace that would bring for all peoples security, and a life of freedom from fear and want.²⁸

(c) *The Declaration of the United Nations of the 1st January, 1942* did not mean a further step forward as far as human rights were concerned, for social rights did not manifest themselves in any definite form in the Proclamation. The signatories declared that "complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands . . ."

(d) *The Declaration of Teheran on the 1st December, 1943* made the promotion of international cooperation its objective, and stated that the time will come when all peoples of the world will, in conformity with their desires and consciences, live a free life, devoid of tyranny.

(e) *The Dumbarton Oaks Proposal of the United Nations Charter* treated the problem of the international safeguard of human rights rather tersely. Among the objectives of the United Nations the Proposals mentioned international cooperation "in the solution of international economic, social and other humanitarian problems" (Clause 3 of Chapter I), and in Section A of Chapter IX the Proposals declared that for the creation of peaceful and friendly relations among nations it was necessary to create the conditions of stability and well-being, and therefore "the Organization should facilitate solutions of international economic, social and other humanitarian problems and to promote respect for human rights and fundamental freedoms".

(f) Finally *the communiqué of the Yalta Conference on the 11th February, 1945* again pledged its word for the right of self-determination, and considered its principal objective the assurance that by a way of cooperation between the peace-loving nations all citizens of every country "may live free from fear and want".

²⁶ Clause 3 reads: "They respect the rights of all peoples to choose the form of government under which they will live and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them."

²⁷ Clause 5 reads: "They desire to bring about the fullest co-operation between all nations in the economic field with the object of securing for all improved labour standards, economic advancement, and social security."

²⁸ Clause 6 reads: "After the final destruction of Nazi tyranny they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want."

After this survey the question may be studied, actually what place has been accorded to the safeguard of human rights in the United Nations Charter, i.e. what qualifies these safeguards as rules of international law?

In response to representations made by the forces of progress the drafters of the United Nations Charter were not satisfied with the concise wording of the Proposals of Dumbarton Oaks. They embodied organically the idea of the international safeguard of human rights in the Charter, which makes mention of human rights at seven different places.

According to the Preamble of the Charter, the United Nations again pledge themselves "for the fundamental human rights, the dignity and worth of human personality, the equal rights of men and women and of nations large and small".

According to Clause 3, Article 1 of Chapter I on the purposes and principles of the United Nations, one of the purposes of the Organization is "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

The Soviet Union had a decisive part in that against the Proposals of Dumbarton Oaks, in the Charter the need for the safeguard of human rights was expressed not only in Chapter IX on international economic and social cooperation but, at the motion of the Soviet representative, this demand was taken up in Clause 3 of Article 1 on the purposes and principles of the United Nations.²⁹

In accordance with clause (b) of Article 13 of Chapter IV on the General Assembly: to promote these ends the General Assembly shall initiate studies and make recommendations.

Further Article 55 of Chapter IX on international economic and social cooperation declared that the United Nations would promote the universal respect for these rights.

The proper organ of the United Nations dealing with human rights is the Economic and Social Council called to life for the promotion of international cooperation, among whose functions is to put forward recommendations "for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all" (Clause 2, Article 62, Chapter X). The competence of this Council extends to the formation of commissions for the promotion of human rights (Article 68).

The Charter does not stress the social rights specially. When the Charter was drafted the delegation of the USSR struggled tenaciously in order that the economic, social, and cultural rights be taken up in the Charter, so in particular the right to work. However, owing to the resistance put up by the capitalist countries only the right to full employment was taken up in the Charter in response to

²⁹ Krylov, S. P., *Materiali k istorii Organizatsii Obedinennikh Natsiy*, Moscow—Lenin-grad, 1949. Quoted by Szabó, I., in "Az emberi jogok nemzetközi jogi vonatkozásai" (Human rights in their relation to international law) in: *Studies in International Law*, 1953, p. 54.

a Soviet motion (Clause (a) Article 55).³⁰ Still it is of undoubted significance that the Charter of the United Nations entrusted the Economic and Social Council of UNO with the safeguard of human rights.

Finally Clause (c) Article 76 of Chapter XII on the International Trusteeship System declared that one of the basic objectives of the trusteeship system was also to encourage respect for human rights for all without distinction as to race, sex, language, or religion.

A study of the provisions of the Charter concerning human rights justifies the statement that the Charter quotes the respect for human rights among the objectives of the Organization, on the one hand, and on the other, defines the special functions of the different organs of the Organization in relation to the safeguard of human rights in the sections outlining the scopes of these organs.

When now the question is asked, what new elements have been added by the Charter to the notion of the safeguard of human rights on the international plane, the following may be stated:

(a) *A new element of the Charter* in relation to the international safeguards of human rights is that *recognition* has been given to the principle of the equal rights and self-determination of the peoples. As a matter of fact, the respect for these principles has been made cardinal condition of the safeguard of human rights.

Clause 2 Article 1 of the United Nations Charter declares that it is the end of the United Nations "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

In Chapter IX of the Charter, among the objectives to be realized within the framework of international economic and social cooperation, the creation of the conditions of stability and well-being are mentioned which are essential for peaceful and friendly relations among nations relying on the respect for the principle of equal rights and self-determination of peoples (Article 55).

Beyond the covenants uniformly binding all member states the Charter in detail specifies the responsibilities of the states in charge of the administration of various territories (colonies or trusteeships).³¹

Under these provisions of the Charter the attainment of the equality of rights and self-determination of all peoples has been made the duty of the member states. The compliance of the nations with these commitments is the pre-condition of the effective safeguard of human rights. The fact that in our days — quite apart from the rights of nations — the freedoms of the individual do not assert themselves, does not call for any special confirmation.

Graefrath formulates this idea in the following words: "The right of self-determination of the nation . . . is the fundamental human right in which every other human right finds its general expression. Neither political, nor social or cultural rights can be guaranteed where the right of self-determination of the

³⁰ Krylov, S. P., op. cit. p. 146.

³¹ See Articles 73 and 76 of the Charter.

nation is violated or suppressed".³² "It appears as if individual liberty increasingly depended on the freedom and independence of the nation."³³

(b) Even if the safeguard of economic, social, and cultural rights is not expressly guaranteed by the United Nations Charter, the circumstance that within the framework of the United Nations the Economic and Social Council has been placed in charge of the safeguard of human rights, sufficiently substantiates the thesis that the notion of human rights has undergone a change as for its contents, and that *also within the United Nations the nomenclature of human rights has been expanded with the addition of social, economic, and cultural rights.*

Imre Szabó states that the character of human rights has undergone a change as regards content. This is due in no small degree to the provisions of the constitutions of the socialist states governing the material guarantees of these rights. Rights deemed to be classical have been, and are still being, thrust to the background by such rights as imply the pre-conditions of a life worthy of man, without which the classical rights cannot assert themselves.³⁴ At another place the same author writes: "In the international aspects of human rights at least the recognition must be reached that without certain social reforms, the enactment and realization of social rights, peace and order can hardly be guaranteed within the state. Consequently, in the interest of the enforcement of human rights an international regulation shall also endeavour that a minimum of social demands should be carried into effect within the states and so a basis should be created for the human rights."³⁵

(c) It is a peculiar feature of the United Nations Charter that it wants to guarantee the human rights for all men, to the exclusion of any discrimination. (That is, these rights receive the protection of the Charter "without distinction as to race, sex, language, or religion".) It is for this reason that no special provisions have been taken up in the Charter for the protection of the minorities. Green points out that essentially it is the case of the two aspects of the same problem. "The prevention of discrimination and the protection of minorities are two sides of the same coin — the safeguarding of the rights and freedoms of individuals and groups. The first relates to persons who wish to become completely identified with the society in which they dwell and to enjoy equal rights and privileges, free of any discrimination on grounds of race, sex, language, or religion. The second relates to groups of persons who wish to remain distinct from others in their society and who wish special protection for their group. The prevention of discrimination thus requires negative action to prevent the denial of rights to individuals; the protection of minorities requires positive action to grant special privileges to groups that desire to preserve their own language, religion, and culture."³⁶

³² Graefrath, B., *Die Vereinten Nationen und die Menschenrechte*, p. 56.

³³ Graefrath, B., *op. cit.* p. 25.

³⁴ Szabó, I., *op. cit.*, p. 89.

³⁵ Szabó, I., *op. cit.* p. 148—149.

³⁶ Green, James Frederick, *The United Nations and Human Rights*, Washington, 1956, pp 92—93.

Holcombe explains the fact that unlike the League of Nations the United Nations Organization adopted the general system of the safeguard of human rights instead of a system for the protection of minorities as follows: "The experience of the League of Nations in attempting to protect minorities against denial of equal protection under the laws of the state in which they reside established a precedent for the international supervision of human rights within national borders. It also affords a guide against the repetition of obvious errors. The rights to be protected by the United Nations must be clearly expressed. The obligations of the United Nations must be limited to what may reasonably be expected to be within the competence of an international agency. It will also be necessary to determine in advance whether the aim of international action is to permit the autonomous development of cultural groups with a view to the preservation of their traditional cultures, or merely to protect minorities against discrimination during a period of transition to their eventual assimilation."³⁷

It may be recorded as a fact that besides the Charter other international instruments signed after the Second World War changed over from the protection of minorities to the general protection of human rights. In fact the peace treaties signed after the Second World War also speak only of a general protection of human rights, and of all only the one signed with Italy contains special provisions for the protection of the German population in South Tyrol, and of the minorities of Trieste at that time organized as a free territory. At the same time, a study of the entire system of provisions of the United Nations Charter disallows the assertion as if the Charter had dropped the idea of minority protection altogether. The principle of equal rights and the right of self-determination of the peoples, when the historical background of the problem is studied, was undoubtedly taken up into the Charter for the sake of peoples living in colonial or dependent territories. However, this principle has received its formulation in the Chapter of the Charter dealing with the purposes and principles of the United Nations Organization. By a bona fide compliance with the undertakings included in the Charter, the member states are bound to respect the special rights of the minorities beyond the universal human rights. That is, the principle of the equality of rights and the right of self-determination of the peoples even today in all circumstances *incorporate the protection of the traditional rights of the minorities.*

After this survey of the new elements added by the Charter to the sphere of human rights, an investigation of the legal character of the provisions of the Charter regarding human rights appears to be appropriate.

Above all it should be pointed out that the Charter refers to human rights in general terms only, but fails to define the nomenclature of human rights.

Cassin believes this to be a deficiency of the Charter when he writes: "The Charter . . . does not specify, even in the shortest form, which rights and which

³⁷ Holcombe, A., *Human Rights in the Modern World*, New York, 1948, p. 106.

freedoms should be considered most fundamental, and even more it abstains from an enumeration or definition of these rights and freedoms".³⁸

So the Charter left it to the member states of UNO to define — in cooperation with its competent organizations — which rights come within the sphere of human rights.

The drafters of the United Nations Charter defined the obligations of the member states of UNO relating to human rights in a way that considerable concessions had been made to the principle of state sovereignty, and that as for the problem of human rights the limitations of the possibilities of an international organization were borne in mind.

According to Article 56, the Charter which imposes obligations on the member states in this respect declares: "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

Cassin, as regards relation of the Charter to the principle of state sovereignty writes "... the question may be asked whether the United Nations Charter was not intent on overthrowing the traditional principle (i.e. that of state sovereignty) by that it raised the totality of the human rights and the fundamental freedoms to an international plane and consequently the exception of the 'domaine réservé' asserted itself only in respect of rights and freedoms for which the Charter, in accordance with Articles 55 and 56 had not called on the member states for cooperation. In our opinion this is the solution. It is impossible to deny either the competence of the organs of UNO, or the value of the legal obligations accepted by the member states, according to which the members are prepared to cooperate with these organs for the effective safeguard of the human rights and fundamental freedoms. If a demand for cooperation, express or tacit, shall be forthcoming from UNO, the problem will cease to be one exclusively or essentially within the domestic jurisdiction, and no reference can be made to Clause 7 of Article 2..."³⁹

At the same time the discussions in the conference of San Francisco undisputably proved the express intention of the drafters of the Charter that the international safeguard of human rights should be integrated into the well-considered and methodical system which the United Nations Charter realized on the entire plane of international cooperation, by maintaining the respect for state sovereignty. This intention has found expression in Article 2 of the Charter, which pronounces the principle of the sovereign equality of the member states of the Organization, and also in Clause 7 of Article 2 on the prohibition of an interference in the internal affairs.

In the drafting of the Charter it was made clear, and this would appear to follow logically from the principle of "sovereign equality", that the United Nations is an organization to achieve certain economic and social purposes by international cooperation, and that the organs of the United Nations only have powers appro-

³⁸ Cassin, *La Déclaration universelle et la mise en oeuvre des droits de l'homme*, p. 250.

³⁹ Cassin, *op. cit.* p. 253.

priate to the facilitation of that cooperation. One reason for giving the "domestic jurisdiction" principle contained in Article 2 (7) a more general application than was originally provided for in the Dumbarton Oaks Proposals was to make it clear that the strengthening of the economic and social provisions of the Charter did not give the United Nations power to coerce states in respect to matters which had hitherto been regarded as falling within their exclusive domestic jurisdiction.⁴⁰

It was not by mere chance that Clause 7 of Article 2 of the United Nations Charter quoted above reading that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state", i.e. containing the express prohibition of an interference in the internal affairs of the particular states, was put just where it was put: i.e. in the introductory section of the Charter, unlike the Covenant of the League of Nations where this question had been governed by Clause 8 of Article 15. The very position of Clause 7 of Article 2 in the Charter expresses that all other provisions of the Charter, i.e. also those enacting the respect for human rights, should be construed in the light of this article.

After what has been set forth above the question may rightly be asked what legal construction should be given to the undertaking expressed in Article 56 of the United Nations Charter *when any of the member states* by referring to Clause 7 of Article 2 *may refuse cooperation with the United Nations in matters of protection of human rights*.

Undoubtedly, here a problem emerges which is extremely difficult to solve both from the theoretical and practical aspects. Exactly where is the limit short of which the organs of UNO must stop in their activities for the promotion of the ends laid down in Article 55, without risking a conflict with the stipulations of Clause 2 of Article 7? Which are the cases in which the member states of UNO may deny a cooperation with the organs of UNO with reference to the prohibition expressed in Clause 2 of Article 7 without coming into conflict with their undertakings under Article 56?

To reply these questions, the following facts will have to be borne in mind:

(a) A definition of the undertakings in Article 56 of the Charter is rather perplexing for the very reason that the Charter itself fails to give a nomenclature of human rights, and consequently the limits of the undertakings of the member states are blurred from the very beginning.

(b) The organs of UNO engaged in promoting respect for human rights have no authority vested in them to pass resolutions binding upon the member states. Even resolutions passed in the General Assembly in matters of human rights have the character of recommendations only. Still, even for want of a legal obligation, the resolutions embody a certain moral obligation.

(c) A distinct line has to be drawn between the actions of UNO purposing the promotion of respect for human rights, and the attempts of member states to interfere in the internal affairs of other states on the pretext of the protection of human rights.

⁴⁰ Goodrich-Hambro, Charter of the United Nations, pp 96—97.

(d) A definite and qualified distinction should be made between a case where the legal system of a state itself expressly violates human rights (e.g. that of the Union of South Africa) and a solitary case where this situation does not exist, however, a national of a state has a grievance on account of the violation of his human rights.

(e) Finally the member states of UNO must comply with their undertakings in Article 56 of the Charter for the respect for human rights in *good faith*.

After these preliminary remarks, which in the following investigations will be constantly remembered, a concrete study may be made of the activities displayed by UNO with the purpose of enforcing the respect for human rights.

As will be seen, UNO has drafted a number of conventions dealing with the protection of human rights. Obviously it cannot be deemed an infringement of Clause 2 of Article 7 of the Charter, when the United Nations Organization applies to the member states for a cooperation in drafting such conventions. The member states, provided they are willing to comply with their undertakings under Article 56 *bona fide*, are bound to active cooperation in drafting international instruments associated with the protection of human rights, irrespective of the fact that the resolutions of the General Assembly containing the appeal for cooperation are mere recommendations. (The actual participation in an international convention, i.e. signature, ratification, accession, is an altogether different problem, and in this respect international law has got established principles.)

UNO and its specialized agencies have published a number of studies on the subject of the promotion of human rights (such are e.g. the Yearbook of Human Rights; the compilation made in the matter of the nationality of married women; the reports of the International Labour Organization on the enforcement of international conventions and recommendations, etc.). When now for the purposes of these studies the United Nations Organization applies to the member states for data on the assertion of these rights in their own countries, obviously UNO proceeds within the limitations of the functions vested in it by the Charter. The member states will have to comply with their commitments under Article 56 even in such and similar cases.

Special mention should be made of activities of the organs of UNO which purpose the enforcement of human rights in a *specific* member state, for here it may be feared that the action of UNO comes into conflict with the provisions of Clause 7. (Article) 2.

When the complete legal system of any one of the member states is such as denies the human rights and the fundamental freedoms without distinction on grounds of race, sex, language, or religion, it is obvious that this state not only fails to comply with the undertakings in Article 56 of the Charter, but its attitude is in conflict with the whole spirit of the Charter. An attitude of this sort cannot be reconciled to the membership of UNO. A resolution passed by the General Assembly in this case, warning the member state in question to change its attitude (which anyhow has the character of a recommendation only) will not be in conflict with Clause 7 Article 2 of the Charter. Resolutions of

this type were passed in recent years by the General Assembly in the matter of the "Apartheid" policy of the Union of South Africa.

The case will be an altogether different one when in a state, whose legal system otherwise guarantees human rights, a person or a group of persons makes grievances for the violation of personal rights. Obviously, an action by the UNO in such individual cases would be unjustified. In such and similar cases the only path to the enforcement of rights is through an appeal to the domestic mechanism of legal remedies. If in such cases the United Nations Organization were to pass a resolution, be it of the nature of a recommendation only, it would act *ultra vires*, and infringe the prohibition expressed in Clause 2 Article 7 of the Charter.

When now an attempt is made to answer the question, in view of the prohibition expressed in Clause 2 Article 7 of the Charter, *what is the legal content of the undertakings in Article 56 of the Charter*, then the following may be stated:

The promotion of respect for human rights has become an obligation of UNO itself, and also of the member states. This undertaking is one under international law, enforceable on an international plane only, with the means of international law. The subjects of this undertaking (obligors, obligees) are: on the one hand UNO which has undertaken towards the member states to promote the enforcement of these rights, and on the other the member states, which in accordance with the Charter have covenanted to cooperate with UNO for the promotion of these rights, still which have a claim on UNO for an action *by* UNO in the interest of these objectives.

From this statement the following conclusions may be drawn:

(a) Within the sphere of its functions UNO may proceed in the protection of human rights only so as to conform to the international-law character of the undertakings of the member states. So UNO has to respect the sovereignty of the member states. While enforcing the respect for human rights, UNO must not infringe the prohibition in Clause 2, Article 7. First of all, UNO will have to refrain from an interference when it is a case of grievances of individuals, i.e. natural persons, who cannot be direct subjects of international law. When, however, the legal system of a state, or the whole construction of the government of that state, is conflicting with the undertaking for the respect for human rights, there can be no question of UNO acting *ultra vires*, when it initiates actions or passes resolutions. Obviously, this would be the case of the violation of obligations by a given state under international law.

(b) Since under Article 56 of the Charter the member states of UNO have assumed a commitment to cooperate with UNO for the enforcement of the respect for human rights, the fact that the enforcement of these rights has become one of the objectives of UNO does not entitle the member states on the pretext of the protection of human rights to interfere in the internal affairs of one another.

After these conclusions it should, however, be noted that from the very beginning a tendency manifested itself to distort, or put a wrong construction on, the principles incorporated in the United Nations Charter. This may be explained by the circumstance that the problem of the protection of human rights on the interna-

tional plane came into prominence at a time when under conditions of the cold war tendencies cropped up in imperialist circles to liquidate state sovereignty altogether. The endorsers of this policy on the pretext of the protection of human rights were endeavouring to acquire controlling rights in the internal affairs of other states. These political tendencies found their reflection in the literature on international law of the capitalist countries. Opinions of a superannuation of state sovereignty began to spread, and correspondingly also ideas on the international safeguard of human rights which thought to enforce the protection of human rights through an international machinery by the curtailment, or even wholesale abolition, of state sovereignty. It was claimed that natural persons were subjects under the terms of international law, and that they should be free for any violation of their rights to enter complaints against their state directly at an international forum.

As has been seen from the earlier discussions, these tendencies and principles are alien to the spirit of the Charter, and in conflict with its express provisions.

Consequently, on the pretext of the protection of human rights UNO cannot interfere in the domestic affairs of the member states, consequently it cannot even bring pressure to bear on the member states. However, in this connection a specific case of the protection of human rights should be remembered where UNO may employ force through its competent organs.⁴¹

In the Sub-Committee Report I/I/A of the San Francisco Conference⁴² the following statement may be read in connection with Clause 3 Article 1 of the Charter on the respect for human rights: "The subcommittee held that assuring or protecting such fundamental rights is primarily the concern of each state. If, however, such rights and freedoms were grievously outraged, so as to create conditions which threaten peace or to obstruct the application of provisions of the Charter, then they cease to be the sole concern of each state." If "assuring and protecting fundamental human rights is the concern of each state", it is certainly a matter which is "essentially within the domestic jurisdiction" of the state; and Article 2, paragraph 7 forbids intervention of the Organization in such matters, except in case of threat to the peace and breach of peace, that is to say, under Article 39. Only if this Article is interpreted to mean that the Security Council may declare the conduct of a state as a threat to, or a breach of, the peace, even if this conduct does not constitute a violation of an obligation expressly imposed upon the state by the Charter, action of the Organization against the state is possible which does not grant to its subjects fundamental human rights . . ."

From the Sub-Committee Report it follows that the drafters gave a construction to Clause 7 Article 2 of the Charter, according to which in the event that a state

⁴¹ A characteristic example of these tendencies is the application for an advisory opinion to the International Court of Justice on the motion of the imperialist powers regarding the alleged violation of the peace treaties by Bulgaria, Hungary, and Rumania. [See *Haraszti, Gy.*, *A Nemzetközi Bíróság és Magyarország* (The International Court of Justice and Hungary), in: *Studies in International Law*, 1953, pp 73—95.]

⁴² U.N.C.I.O. Doc. 723. I./I. A. 19 p. 10 quoted by *Kelsen*, *The Law of the United Nations*, pp 29—30.

in matters within its internal jurisdiction, availing itself of its rights, creates a situation which implies a threat to peace and international security, the United Nations are free to introduce measures laid down in the Charter. This construction is else in perfect harmony with Clause 7 Article 2 of the Charter, whose last sentence definitively lays down that the prohibition of an interference in internal affairs "shall not prejudice the application of enforcement measures under Chapter VII". In other words, when by a continued and consistent violation of human rights a state creates a situation which constitutes a threat to international peace and security, the Security Council may proceed against the state in question in the manner specified by Chapter VII of the Charter, i.e. it may take against this state such measures as it deems appropriate and necessary. However, even this authority vested in the Security Council does not amount to an exception granted by the Charter from the prohibition of an intervention in the domestic jurisdiction. As a matter of fact, when a state violates human rights in a manner and with a consistency that international peace and security are in jeopardy, there can be no longer question of assigning a situation so created, and also its liquidation, to the internal jurisdiction of the state. In cases of this sort the Security Council of UNO may rightfully take measures against the delinquent state, and the other states have not merely a right, but even an obligation under the Charter, to take part in the enforcement of the measures decreed by the Security Council.

It should, however, be emphasized that international interference is justified and legitimate only when human rights are violated consistently, and wholesale, in a manner actually threatening international peace and security.

This opinion is endorsed by several writers on international law. So according to Mirkine-Guetzévitch "no reference can be made to the proviso of Clause 7 Article 2 when peace is threatened".⁴³

The position taken by socialist jurisprudence is expressed by Imre Szabó in the following words: "The case of human rights . . . is not in all circumstances a case of international concern, and will become such only when the violation of human rights in a given state has reached a definite stage and asserts itself with a definite consistency, and permanently."⁴⁴

"Human rights, as far as the fundamental factors, the maintenance of peace, the right of self-determination, and the equality of rights are concerned, have become matters of international concern, and have outgrown internal jurisdiction. However, only in so far as the fundamental facts are concerned", believes Graefrath, and continues: "Even in the future it will remain the concern of each state to guarantee the human rights to their nationals. However, a system, like the Fascist, where the wholesale and systematic violation of the human rights threatens peace, authorizes UNO to intervention. So far the protection and safeguard of human right is an international obligation, for the maintenance of peace has become, on the

⁴³ *Mirkine-Guetzévitch*, Quelques problèmes de la mise en oeuvre de la déclaration universelle des droits de l'homme. Recueil des Cours. Tome 83, p. 304.

⁴⁴ *Szabó, I.*, Az emberi jogok mai értelme (Modern concept of human rights), p. 177

ground of sovereign equality of each state, an international function.”⁴⁵ At another place he writes: “Any Fascist violation of the human rights threatens peace, for as shown by experience it combines with aggression directed outwards.”⁴⁶

If therefore any state violates human rights in a way and to a degree (either by that the governmental system relies on the suppression of human rights from the very outset, or by that the cases of individual grievances tend to accumulate to mass grievances) that international peace and security are in jeopardy, the competent organ of UNO may within its scope take action against the state threatening peace and security, and in this case the member states of UNO are bound to take part in this action governed by international law.

3. THE FUNCTION OF THE UNITED NATIONS CHARTER IN THE PROTECTION OF HUMAN RIGHTS

The fact that the drafters of the United Nations Charter have incorporated the idea of the international guarantee of the human rights in the Charter, has undoubtedly acted as an incentive to the creation of international instruments for the safeguard of human rights. This effect has perforce manifested itself also because the Charter itself, as has already been pointed out, failed to draft the catalogue of human rights. A demand for the definition of human rights manifested itself partly as the problem of a *general* regulation of the question, partly as the problem of the definition of the *particular* rights.

A General regulation of the protection of human rights

Already on the 21st June, 1946 the Economic and Social Council of UNO in a resolution declared: “The mission of the United Nations for the promotion and protection of human rights as laid down in the Charter cannot be fulfilled unless measures are taken for the protection of human rights and an international charter of human rights is drawn up.”⁴⁷

The Commission on Human Rights constituted under Article 68 of the Charter, in its session of December 1947 decreed that the International Bill of Human Rights should consist of three sections, viz. a universal declaration of human rights, a covenant on human rights, and finally measures of the implementation of human rights.⁴⁸

(1) After protracted drafting work the draft of the universal declaration of human rights⁴⁹ was approved by the General Assembly of the United Nations, in Paris,

⁴⁵ Graefrath, op. cit. p. 27.

⁴⁶ Graefrath, op. cit. p. 30.

⁴⁷ Journal Officiel du Conseil, 13 juillet 1946, No. 29., pp 521 — 527. (Translated from French)

⁴⁸ Economic and Social Council, Official Records, Third Year, Sixth Session, Suppl. No. 1 (1948).

⁴⁹ Preparatory work of the Commission of Human Rights was influenced by drafts made by private persons, international organizations, or states. The most outstanding of the private drafts is that of *Lauterpacht*, which was published in his work, *An International Bill of the Rights of Men* (New York, 1945, pp 69 — 74).

on the 10th December, 1948, by forty-eight delegations; eight delegations abstained from voting.

The following is the outline of the structure of the Declaration of thirty sections:

Articles 1 and 2 following upon the Preamble give the general principles which are not entirely free of concepts of natural law. So Article 1 reads: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood."⁵⁰

Articles 3 to 17 of the Declaration define the personal freedoms, Articles 18 to 21 the political freedoms. Articles 22 to 28 of the Declaration embrace the provisions on economic, social, and cultural rights, and finally Articles 29 and 30 contain the closing provisions.

When now the Declaration is analysed by its content, the following positive traits may be pointed out.

(a) Undoubtedly it is to the credit of the Declaration that it defines the economic, social, and cultural rights of man (Articles 22 to 28). By this the Declaration confirms the general tendency which manifested itself during the latter decade with the end to complete the catalogue of human rights also by the inclusion of rights belonging to the latter field.

(b) Another undoubtedly positive trait of the Declaration is its claim to universality. So already in Article 2 it has been stated that human rights are the due of all, irrespective of race, colour, sex, language, religion, political opinion. Furthermore the Declaration points out that these rights are the due of all irrespective of the status under international law of the territory where those concerned are living, i.e. irrespective of whether it is an independent state, trust, or a non-self-governing territory. This drive for universal regulation is significant because states which outside the home country govern also other territories, when assuming an obligation under international law to protect human rights at all, endeavour to restrict the extent of this obligation to the territory of the home country.⁵¹

(c) Certain provisions of the Declaration signify a progress in comparison to earlier regulations. So Article 4, in contradiction to earlier international conventions expressly declares the prohibition of slavery.

The deficiencies of the Declaration are that

(a) in contradiction to the express provision of the United Nations Charter the Declaration does not decree the right of self-determination of the peoples, although this is the condition of the safeguard of human rights, and ought to have been made a cardinal provision in the Declaration. In this decisive point the Declaration is lagging far behind the Charter.

⁵⁰ *Kelsen* says the following of this: "The statement that all men are born free and equal is expressly a doctrine of natural law, and this doctrine is far from meeting with universal acceptance." *Kelsen*, op. cit., p. 40.

⁵¹ For more on this problem see Mrs *Bokorné Szegő, H.*, A gyarmati klauzula alkalmazása a nemzetközi szerződésekben (The application of the colonial clause in international conventions). Állam- és Jogtudományi Intézet Értesítője, Vol. IV. No. 3, pp 341—372.

(b) The Declaration contains no provisions for the guarantee of the true assertion of human rights. In this connection it should be remembered that the delegate of the USSR, in the course of the debate on the Draft Declaration, raised the problem of the guarantees of the rights included in the Draft, and put forward a motion to supplement the Draft with the appropriate concrete provisions. He moved that as a last Article the following provision should be taken up: "The rights and fundamental freedoms of man and citizen enumerated in the present Declaration are guaranteed by the enactments of the states. Any direct or indirect violation or limitation of these rights shall constitute an infringement of the Declaration and is incompatible with the august principles declared by the United Nations Charter." In fact, it is beyond doubt that the notion of human rights cannot be treated as independent of the notion of the state. When human rights receive no protection from the state, they soon will turn into mere abstractions or illusions.

(c) The generalized formulation of certain provisions of the Declaration, e.g. on the freedom of opinion (Article 19), freedom of assembly and association (Article 20) without the addition of any guiding principles, provides means for the propagation of Fascist doctrines; or — by referring to the Declaration — it enables to put forward claims to the formation of organizations with antidemocratic purposes, although the Declaration as a whole ought to serve the reinforcement and safeguard of democracy.

If now the Declaration is analysed from the aspects of international law the following may be stated:

As is manifest from its designations, the Declaration is void of any concrete obligations under international law which would be binding on the member states of UNO. At the same time there are undoubted tendencies to attribute a certain international-law character to the Declaration.

One of the arguments announces that "the Declaration is an authentic interpretation of the Charter", and from this it derives also its obligatory character. So, according to Lauterpacht, the Declaration contains "the authentic interpretation of human rights and fundamental freedoms, which establish an obligation for the member states of UNO based on a *lex imperfecta*."⁵²

On the other hand Kelsen, as regards the legal nature of the Declaration, took the position that the Declaration could not be considered an authentic interpretation of the provisions of the United Nations Charter regarding human rights. An authentic interpretation was not possible unless by way of an amendment of the Charter.⁵³

The gist of the second argument, which to a certain extent would like to attribute the character of a legal obligation to the Declaration, can be expressed as follows: The Declaration substantiates the undertaking in Article 56 of the United Nations Charter, that for the promotion of human rights each member state is

⁵² Lauterpacht, H., *International Law and Human Rights*, 1950, pp 408, 409.

⁵³ Kelsen, *op. cit.*, p. 40.

bound to cooperate with the Organization "jointly and severally". From this it follows that the provisions of the Declaration, as far as the problem of human rights is concerned, define the competency of the organs of UNO. So Cassin writes as follows: "The Universal Declaration which the General Assembly promulgated on the ground of the United Nations Charter partly insists upon the jurisdiction of the organs of UNO in matters of human rights, partly appeals to the member states to cooperate with UNO in the interest of the safeguard of the proclaimed rights. Consequently, in respect of these rights the Declaration is in its full extent a source of the obligation devolving on the member states under Article 56 of the Charter to cooperate with UNO actions to this end." "A member state which declines a cooperation with UNO or arbitrarily offers opposition to the principles of the Declaration, will come into conflict with Article 56 of the Charter."⁵⁴

Even if the Declaration does not possess the Character of an international convention, and may be considered merely a "recommendation", without imposing obligations under international law on the member states, it is beyond doubt that it exercised a decisive influence on the definitions of rules of international law on the safeguard of human rights, and within the particular states, on the enactment of rules of law reinforcing civic rights. It means a decisive step forwards on the path to the protection of human rights on the plane of international law. Certain provisions of the Declaration have been taken up in the constitutions of a number of states, in international conventions, and in resolutions passed by international organizations.⁵⁵

For example, the preamble of the Constitution of the Republic of Guinea expressly emphasizes that "the State of Guinea to its full extent identifies itself with the United Nations Charter and the Universal Declaration of Human Rights".

The final communiqué of the Bandung Conference of the representatives of the Afro-Asiatic states, in April, 1955, reads as follows: "1. The Asiatic-African Conference declares the support of the fundamental principles of human rights incorporated in the United Nations Charter and approves the Declaration of Human Rights as the common objective of every people and every nation."^{55/a}

As regards the Seminar on the Status of Women in Family Law held in Bucharest between the 19th June and 3rd July, 1961 in its conclusions on the effects of matrimony the Conference declared: "Marriage should have no legal effect on the personal status of the woman which would be contrary to the principle of equality of rights between husband and wife, in accordance with Article 16 of the Universal Declaration of Human Rights and resolution 03 D (XVI) of the Economic and Social Council."

However, for the sake of completeness also a case should be quoted where reference to the Universal Declaration of Human Rights is rather of a formal

⁵⁴ Cassin, *op. cit.*, pp 292, 293.

⁵⁵ For more details see The Impact of the Universal Declaration of Human Rights. United Nations Department of Social Affairs, 1951, pp 18-32.

^{55/a} Quotation translated from French.

character. So in the Preamble of the European convention on the "Human Rights and Fundamental Freedoms" approved under the auspices of the Council of Europe on the 4th November, 1950 in like way reference was made to the Declaration, and it was declared that the convention was the initial step to the implementation of rights expressed in the Declaration.

In point of fact the rules incorporated in the convention apply to a narrower sphere than the Declaration, and no provisions have been taken up on economic, social, and cultural rights. The convention speaks of some of the civic and political rights only. Also it appreciably narrows down the sphere even of these rights, and authorizes several exceptions to them. Also Section 63 of the convention, diametrically opposed to the United Nations Charter and to the spirit of the Universal Declaration of Human Rights, authorizes such signatories as administer other territories (trust territories, colonies) to restrict the validity of the convention to the territory of the home country.

The following data are characteristic of the activities of the Committee organized under the European Convention of Human Rights and Fundamental Freedoms.

Between 1955 and 1959 the Committee dealt with two complaints altogether which a state brought against another (two complaints of Greece against the United Kingdom on the application of the convention to Cyprus). At the same time 672 individual complaints were filed at the Committee. The number of cases terminated during the period was 450. Thereof 447 were dismissed by the Committee for technical or formal reasons, among these the complaint of the German Communist Party against the German Federal Republic about the ban pronounced on the Party, and only three cases were dealt with on their merits.

The complaint of the German Communist Party was dismissed by the Committee with reference to Article 17 of the convention, on the 20th July, 1957. By this the Committee expressed the unacceptable and revolting opinion that the Party was engaged in activities or was committing acts which purpose the destruction of the rights and freedoms recognized by the present Convention (Article 17 of the Convention). The question may justly be asked, what opinion would the Committee form of the revisionist, Fascist, Nazi organizations semi-officially and officially active in the German Federal Republic, which in fact are threatening the respect for human rights.

The Tribunal called into life by the Convention was constituted only on the 3rd September, 1958. The Tribunal so far failed to display activities which would have contributed truly and effectively to the respect for human rights.

Although within narrow limits, the Convention grants a right of complaint to individuals, groups, or social organizations in the event of the violation of human rights by any one of the signatories.

In connection with the right of complaint granted to the individual the problem of the individual as subject of international law emerges. In this matter the author of this paper is in full agreement with the position taken by Haraszti:

"The very definition of international law suggests that this law is in general called to govern legal relations between states, i.e. its primary function is to

authorize and oblige the states directly, and not single persons. The direct elevation of individuals to the international plane, and their rise to the status of derivative subjects of law is an unnecessary and dangerous procedure. It is dangerous, because it loosens the ties of allegiance of the individual to his own country, moreover it is apt to juxtapose him to it, and offers an opportunity to the individual to mar relations between sovereign states by submitting his claims directly to an international forum. Yet above all, the tendency to grant an individual the status of a subject of international law is condemnable for the very reason that the clandestine ends of the imperialist powers are lurking behind it. The imperialist states thought the juxtaposition of the individual and his own state on the international plane to be an excellent means for an interference in the domestic affairs of other states, whenever possible."⁵⁶

(2) Whereas the first section of the International Bill of Human Rights, i.e. the Declaration of Human Rights contained no obligations binding the states members under international law, the drafters of the second section were confronted with the problem of drawing up an international instrument defining the obligations under international law.

After the approval of the Declaration the Human Rights Commission formulated the temporary wording of the convention. The formulation of the draft convention met with considerable difficulties, which arose from conflicting intentions rather than from opposing notions, of the representatives of the states as regards the nature and character of human rights. Certain imperialist states in first order thought to make use of the cause of the international protection of human rights for an interference in the domestic affairs of certain socialist countries. However, very soon they began to realize that in the event of the approval of the international convention for the international safeguard of human rights they may be faced with the question, whether they would themselves assume an obligation under international law, and also meet their commitments. Exactly for this reason they were reluctant to take up economic, social, and cultural rights in the convention.

Thus, there were no provisions on social and cultural rights in the first draft formulated by the Human Rights Commission. The debate in connection with the incorporation of these rights in the convention, which took place in the Economic and Social Council, eventually centred around the question, whether the safeguard of civic and political rights on the one part, and economic, social, and cultural rights on the other should be consolidated in a single draft or should the two groups of rights be segregated, and two draft conventions framed. The question was submitted by the Economic and Social Council to the Fifth Session of the General Assembly of the United Nations for decision. In its Resolution 421/E/V of the 4th December, 1950, the General Assembly, doing justice to the progressive position, declared that "*Whereas* the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent,

⁵⁶ Haraszti, Gy., A nemzetközi jogalanyiság kérdéseihez (On problems of subjects of international law). Acta Facultatis Politico-Iuridicae Universitatis Scientiarum. Fasciculus 1, pp 59-60.

Whereas, when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man," . . . therefore the General Assembly . . . "*Calls upon* the Economic and Social Council to request the Commission on Human Rights in accordance with the spirit of the Universal Declaration, to include in the draft Covenant a clear expression of economic, social and cultural rights in a manner which relates them to the civic and political freedoms proclaimed by the draft Covenant."

So the Fifth Session of the General Assembly stood for the approval of a single convention including the civic and political rights as well as the economic, social and cultural ones.

However, subsequent upon the resolution of the General Assembly the tendency prevailed which from the start had been averse to the incorporation of the economic, social, and cultural rights in the convention. In response to this tendency the Economic and Social Council in a resolution⁵⁷ applied to the General Assembly to amend its earlier position expressed in its resolution 421/E/V, and take a stand for the signature of two distinct conventions granting the rights referred to above.

In the Sixth Session of the General Assembly the majority of the delegations thought that the system of two conventions would induce a larger number of states to accede to the conventions. As a matter of fact, whereas the civic and political rights could be enforced by a single act, the economic, social, and cultural rights wanted an extended period of time to mature. After a protracted debate the General Assembly adopted the proposal of the Economic and Social Council, and through the Council asked the Commission on Human Rights in its resolution 543/V of the 5th February, 1952, to formulate *two drafts*. The resolution was passed by a slight majority of votes (26 against 20, with three abstentions).

At the same time, at the motion of the Near-East and Asiatic states, seconded by the USSR, the General Assembly passed a resolution (545/V) according to which an article should be taken up in each of the draft conventions which confirmed the statement of the Charter on the right of self-determination of the peoples, and expressly granted that right. The Human Rights Commission in April 1952 even formulated this Article. The resolution 637/VII passed by the General Assembly on the 16th December, 1952 was rather significant, as it declared that the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.

In its Tenth Session (23rd February—16th April, 1954) the Human Rights Commission laid down the full wording of the draft conventions. The draft convention of economic, social and cultural rights consisted of twenty-nine articles, that of the civic and political rights of fifty-four articles, hereunderstood provisions for their enforcement. Article 1 in both drafts is a formulation of the right of

⁵⁷ United Nations Economic and Social Council E/2105. 3. Aug. 1951.

self-determination of the peoples and nations and declares as principle: "All peoples and all nations shall have the right of self-determination, namely the right freely to determine their political, economic, social, and cultural status."

The several articles of the drafts are submitted for discussion to Committee No. III of UNO during the annual sessions of the General Assembly, and this discussion is still in progress. Accordingly, the international conventions on the safeguard of human rights have not as yet been signed. For the time being the drafts have not matured to the convention stage.

Consequently, for the time being what we have are mere draft-covenants on human rights, which may still be modified, and it is uncertain whether they will ever be approved. Nevertheless a survey of the principal features of the drafts appears to be appropriate without, however, embarking upon a detailed appraisal or even an analysis of the particular articles.

The *positive traits* of the drafts in their present form may be summed up as follows:

(a) The fact that both drafts confirm the respect for the self-determination of peoples and nations is by itself a momentous step towards the enforcement of the spirit of the United Nations Charter. In this respect the drafts have gone beyond the provisions of the Universal Declaration of Human Rights.

(b) Although the draft convention of economic, social, and cultural rights is rather vague, and reminds in its wording of a declaration, still it may be noted as a positive result that the draft does include these rights and it draws their sphere wider than the Declaration of Human Rights.

(c) An undoubtedly positive trait of the present wording of the drafts is their trend towards universality.

In this connection it should be mentioned that the original draft of the Commission on Human Rights, on the suggestion of the United Kingdom, contained the "colonial clause". This clause would have granted the right to states responsible for the administration of certain territories to decide autonomously, and in each case separately, on the extension of the validity of the convention to the territories administered by them. At the motion of the Soviet Union, on the 4th December, 1950, in its Resolution 44/V the General Assembly declare:

The General Assembly Requests the Commission on Human Rights to include the following article in the International Covenant on Human Rights: "Article. . . " "The provisions of the present Covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust or Colonial Territories, which are being administered or governed by such metropolitan State."

This provision has in fact been taken up as Article 28 of the draft convention on economic, social, and cultural rights, and Article 53 of the draft convention on civic and political rights.

The drafts undoubtedly have also *negative traits*:

(a) Above all it should be pointed out that a regulation by way of two separate pacts does not redound to an effective safeguard of human rights. This division

of human rights (which will hardly stand the test of either theory or practice) presumably serves the purpose that some of the states might become signatories of the one pact, e.g. the one on civic and political rights only, whereas they may consider themselves acquitted of the obligation to ensure economic, social, and cultural rights.

(b) Whereas the rights taken up in the draft on civic and political rights have been formulated in a clear-cut manner, the general formulation of the articles on the economic, social, and cultural rights are too vague to ensure the actual and instantaneous enforcement of these rights. According to these articles the signatories "recognize the right . . ." However, the recognition of the rights is not identical with an undertaking to safeguard them. Consequently, the draft is but a declaration clad in the form of a convention rather than an international pact stating the obligations of the signatories.

(c) Certain provisions of the pacts provide an opportunity for tendencies to interfere in the sphere of the domestic jurisdiction of the signatories. Each draft contains provisions in connection with reports to be prepared of the progress achieved in the safeguard of human rights. However, whereas the provisions relating to the reports on economic, social, and cultural rights are restricted to mere information, the draft of civic and political rights contains provisions on the constitution of an independent organization, the Human Rights Committee⁵⁸ and even lays down the statutes of this Committee. The primary function of this Committee would be of a conciliatory nature, however, certain provisions of the draft undoubtedly admit an interference in the internal affairs of a state. So according to Article 40 of the draft: "If a State Party to the Covenant considers that another State Party is not giving effect to a provision of the Covenant, it may, by written communication, bring the matter to the attention of that state." Further: "If the matter is not adjusted to the satisfaction of both Parties within six months . . . either state shall have the right to refer the matter to the Committee." When the Committee cannot settle the dispute by offering its good offices or by methods specified in Article 43 of the draft, under Article 46 of the draft either party may bring the case to the International Court of Justice for decision. However, such a provision whereby the interested parties would be given the choice to decide in each given instance by common agreement whether to submit the dispute to an external forum (in this case, to the International Court), would correspond more closely with the principle of state sovereignty.

Undoubtedly, the acceptance of the draft-pacts would become an effective means for the safeguard of human rights. The protection, however should be such as to respect state sovereignty at the same time. Even international conventions of this type cannot be construed so as to authorize the contracting states, in cases of a violation, to interfere in the internal affairs of the state violating the convention by resorting to force, in contravention of the effective rules of international law.

⁵⁸ The Human Rights Committee is not identical with the Commission of Human Rights responsible for drafting the conventions.

A simple violation of an international convention on the safeguard of human rights by a signatory brings to prominence the problem of the liability of the violating country under international law (the case of a consistent, continual, and universal violation of the human rights, as an essentially different problem, has already been discussed earlier). In the given case the signatories may apply means against the delinquent state which conform to the general principles of international law, and are proportional to the tort under international law. Since, however, the United Nations Charter prohibits the use of force in the international relationships of the states, in the event of the violation of an international convention no acts contrary to this prohibition could be performed, not *even as reprisals* today.

Since the draft pacts or conventions on human rights are still in the preparatory stage, all that may be said as regards their significance at the present juncture is that the *efficacy of the proposed conventions will depend on the provisions taken up in the final wording, and also upon the number of states acceding to them, and on the manner the signatories will comply with their undertaking.*

B. International regulation of the protection of certain specific human rights

(1) Pacts signed under the auspices of the United Nations Organization.

The provisions of the United Nations Charter regarding human rights brought to maturity not only the need for a general regulation of these problems: beyond doubt these provisions were instrumental in bringing about — under the auspices of UNO — the approval of a number of international pacts and conventions and the amendment of earlier pacts and conventions on the protection of human rights.

An analysis of these conventions will reveal at once the incentive given by the Charter.

Among the pacts and conventions signed under the auspices of UNO the one on the *Prevention and Punishment of Genocide* signed on the 9th December, 1948 is particularly significant.⁵⁹ The Preamble of this Convention mentions the fact that the member states were prompted to sign the Pact by the Resolution 96/I of the General Assembly of the 11th December, 1946.

Under the Convention genocide (the wholesale extirpation of a people), whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish (Art. I). Under the Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

⁵⁹ Decree-Law No. 16 of 1955.

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group (Art. II).

Already the London convention on the prosecution and punishment of the principal European war criminals of the 8th August, 1945, decreed reprisals against criminal acts offending humanity. However, the London convention was intended only for the subsequent punishment of misdeeds committed during the Second World War. The significance of the Genocide Convention consists in that it endeavours to prevent the repetition of such and similar deeds in the future.

Another peculiarity of the Convention is that it expressly affords protection against a violation of the rights of *groups* (national, ethnical, racial or religious), and *not of those of individuals*. Thus, as regards the special protection of group interests, the Convention has — undisputably — expanded the provisions of the United Nations Charter.

According to the Preamble of the *Convention on the Political Rights of Women* of the 31st March, 1953,⁶⁰ the purpose of the convention is to “implement the principle of equality of rights for men and women contained in the Charter of the United Nations”. The convention then declares that women shall be entitled to vote in all elections on equal terms with men, without any discrimination (Article 1). Women shall be eligible for election to all publicly elected bodies established by national law on equal terms with men, without any discrimination (Article 2). The convention also decrees that women should have equal rights with men in civil service, and be qualified for public offices in conformity with national law, without any discrimination (Article 3).

The United Nations Charter included the securing of equal rights for men and women among the purposes of the Organization. The convention meant a significant step in the implementation of this programme.

The same purpose is served by the *Convention on the Nationality of Married Women* approved in New York on the 29th January, 1957.⁶¹

Under the convention conflicts between the statutory provisions of the states regarding the nationality of married women, and cases of statelessness and dual nationality may be eliminated.

In its Preamble the Convention refers to Article 15 of the Universal Declaration of Human Rights, which stated as a principle that everyone had the right to nationality and no one should be deprived arbitrarily of his nationality. The signatories to the convention agreed that matrimony, the dissolution of matrimony, or a change of the nationality of the husband during marriage could not affect the nationality of the wife (Article 1). The convention further declared that neither the voluntary acquisition of the nationality of another state nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national (Article 2). Finally the convention declared that

⁶⁰ Decree-Law No. 15 of 1955.

⁶¹ Decree-Law No. 2 of 1960.

at option the alien wife may acquire the nationality of her husband by way of specially privileged naturalization (Article 3).

Since the right of women to nationality or citizenship is the precondition of the exercise of all other civic rights, in first order of political rights, the convention which guarantees the right of women to a nationality, effectively serves the principle of the emancipation of women.

From the point of view of the safeguard of the rights of women and children it is of importance that alimony or maintenance, as the case may be, is paid them even when the obligor is residing abroad. For this reason the *Convention on the Recovery Abroad of Maintenance* signed in New York on the 26th June, 1956 is of particular significance.⁶²

Since the enforcement of a claim to alimony or maintenance abroad often meets with serious difficulties, the convention proposes the solution of these problems in a way that the signatories mutually assist one another, or the claimants residing in the territory of the one or the other state, in the enforcement of maintenance or alimony in cases where the obligee is residing in the territory of the one, and the obligor in that of the other state.

Under the convention each Contracting Party designates in its own country the authority which in matters of claims to maintenance shall act as transmitting and receiving agencies (Article 2). The transmitting and receiving agencies may communicate in such matters directly with one another (Articles 4 and 5), and the receiving agency is to take all appropriate steps for the recovery of the maintenance in the interest of the claimant, here-included the institution and prosecution of an action (Article 6).

The convention does not solve the problem wholesale, since it does not decree a mutual enforcement of judgements in matters of maintenance, however, beyond doubt it provides facilities for the recovery of payments of maintenance in the event when the obligor has left for abroad.

The safeguard of personal liberty is served by the Convention signed in Geneva on the 7th September 1956 on the *Abolition of Slavery, the Slave-trade, and Institutions and Practices similar to Slavery*.⁶³ In its Preamble the convention, like the others, refers to the principles incorporated in the United Nations Charter and in the Universal Declaration of Human Rights.

In the convention the signatories bind themselves "to bring about progressively and as soon as possible the complete abolition or abandonment of

- (a) Debt bondage,
- (b) Serfdom,
- (c) Any institution or practice whereby

(i) A woman . . . is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

⁶² Decree-Law No. 63 of 1957.

⁶³ Decree-Law No. 18 of 1958.

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise, or

(iii) A woman on the death of her husband is liable to be inherited by another person" (Article 1).

The convention also declares that the signatories, "wherever it is appropriate", may determine the corresponding lowest age limit for matrimony, and promote any such systems of matrimony as allow of the free manifestation of the will of the parties, and of the registration of marriages (Article 2).

The contracting states undertook to prosecute and punish slave-trade, slavery, and the maintenance of institutions and practices similar to slavery (Articles 3 to 6).

A critical deficiency of the convention consists of its many loopholes. The signatories merely undertook to "progressively" abolish institutions and practices which they had condemned, and would introduce measures only where such measures were "appropriate".

For this reason a convention signed subsequently which introduced more efficacious provisions, was of particular significance.

In a number of countries it was felt as a grave problem that, owing to the social institutions, social conditions and customs of their country, women could not choose their partner in marriage freely.

It is a generally known fact that in colonial or other dependent territories families often betroth girls soon after their birth, or formally sell them to their future husbands or their families.

Even if in developed capitalist countries the problem of the freedom of consent does not manifest itself in this overt form, it is beyond doubt that a very great number of marriages are influenced by financial, religious considerations, or racial prejudices even in these countries, and not by personal affection.

It was for this reason significant that the General Assembly of the United Nations, on the 7th November 1962, approved an International Convention on the *Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages*.

According to the convention, no marriage shall be legally entered into without the full and free consent of both parties . . . in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law (Article 1). The signatories by way of legislative action specify the minimum age for marriage, on the understanding that an exemption from this provision cannot be granted unless for serious causes (Article 2). All marriages should be recorded by the competent authority in an appropriate official register (Article 3).

Although the convention did not define the lowest age limit for the conclusion of a marriage, still by laying down as principles that each signatory was bound to specify such minimum age limit that matrimony could be entered into only by the free consent of the parties, that it had to be concluded before the competent authority, that marriages had to be recorded in a register, the convention made a further advance in the safeguard of the rights of women.

White slave trade as a venture yielding ample profits has been flourishing in various forms through the centuries. The organization of its suppression on the

international plane meant a serious contribution to the protection of women and children.

The latest regulation of the problem under international law is the Convention signed in New York, on the 21st March 1950, on the *Suppression of Traffic in Persons and of Exploitation of Prostitution*.⁶⁴

The signatories bound themselves to prosecute and punish anybody who persuaded another person to prostitution or exploited the prostitution of others (Article 1), or kept up brothels (Article 2). The contracting states are bound to introduce measures for the protection of immigrants and emigrants, in particular women and children, during their travel (Article 17), and special provisions for the supervision of labour agencies in order that persons seeking employment, in particular women and children, might not be exposed to the risk of prostitution (Article 20).

Besides these noteworthy international conventions characterized by a progressive spirit, a number of other conventions have been drafted under the auspices of UNO on the protection of human rights which certainly reflect fundamental deficiencies.

So in the debate on the three draft-conventions on the freedom of information (collection of news and their international distribution, the right of correction, and the freedom of information) at the plenary session of the Economic and Social Council, on the 27th August 1948, the Soviet delegate, Pavlov, criticized that the drafts contained no provisions which would prevent the spread of Fascist or war propaganda, or racial, religious, or national hatred. Some of the provisions of the drafts were conflicting with Clause 7, Article 2 of the Charter which prohibited the interference in the internal affairs of any one of the sovereign states.

As regards the scope of the draft-conventions, the intention was clear that there should be a difference between the home country and dependent territories to the prejudice of the latter.⁶⁵

Notwithstanding it is beyond doubt that the provisions of the United Nations Charter on human rights gave an incentive to an international definition of human rights. In the wake of these provisions a number of highly significant international conventions have been signed.

(2) The positive effect of the United Nations Charter resulting in the creation of a number of international conventions on human rights were not restricted to such under the auspices of the United Nations Organization. Also within the framework of the specialized agencies of the United Nations a multitude of conventions sprang up for the safeguard of human rights.

Earlier already reference has been made to the two conflicting, yet intertwined trends behind the international labour conventions signed under the auspices of the International Labour Organization: the tendency of the employers of the

⁶⁴ Decree-Law No. 34 of 1955.

⁶⁵ E/SR/221.

capitalist countries by the introduction of uniform labour conditions to restore the balance in international competition, further the efforts made by the labour movement to fight out better labour conditions. The situation after the Second World War was characterized by the following main features:

- the forging ahead of the forces of progress,
- the formation of the World Federation of Trade Unions,
- the reception of new states liberated from a colonial status by UNO,
- the effects of the progressive rules of law incorporated in the United Nations Charter,
- the participation of the socialist countries in UNO.

All these factors tended to enhance the effectiveness of the latter trend: the enactments of labour law in the socialist states, and provided the foundations on which the labour movement in the capitalist countries could rely in its struggle for better conditions for the working classes, and for the approval of labour conventions specifying progressive rules also within the International Labour Organization.

All these had a positive effect on the activities of ILO, so that within its framework a number of efficacious international labour conventions were born in association with the protection of human rights.

A convention of this type is Convention No. 100 approved in Geneva, on the 29th June 1951, on *Equal Pay to Men and Women for Equal Work*.⁶⁶

Notwithstanding its basic deficiencies one of the principles of equal wages received international confirmation in the form of an international undertaking. Essentially, very little in the convention may be considered binding on the signatories. In point of fact under Clause (1) of Article 2 the signatories have to “promote” the enforcement of the principle of equal pay for equal work only when it can be reconciled with the existing methods of the fixing of wages. Obviously, equal wages for equal work cannot be enforced effectively unless the principle receives statutory recognition, and national legislation declares void any contract, agreement, etc. signed in contravention to the principle.

Although the convention stipulates no legal obligation for the introduction of equal wages, it is beyond doubt that the declaration of the principle has contributed much to its approval and introduction by a number of states.

Another important Convention is No. 111 approved in Geneva, on the 25th June 1958, concerning *Discriminations in Respect of Employment and Occupation*.⁶⁷

The Convention declares that the signatories bind themselves to form and practise a policy which promotes the elimination of any discriminations as far as professional training, employment, and labour conditions are concerned, and creates equal conditions for all, irrespective of race, sex, religious and political convictions, origin, etc. The signatories to the convention are bound to abrogate any statutory provisions and to modify any practice, which cannot be reconciled to the policy defined by the Convention.

⁶⁶ The ratification by Hungary was deposited in Geneva on the 8th June, 1956.

⁶⁷ The Presidium of the Hungarian People's Republic ratified the convention on the 26th May, 1961.

Associated with the protection of human rights is the Convention No. 87 signed in San Francisco on the 9th July, 1948,⁶⁸ on the freedom and the protection of the freedom of trade unions (*Freedom of Association Convention*). Under this Convention the signatories consent to the formation of organizations by the workers, to which they may subscribe freely, and which they administer independently.

In the Convention No. 93 on the *Right to Organize and Collective Bargaining* signed in Geneva on the 1st July 1949,⁶⁹ the signatories undertook to protect the workers against any discriminative acts aimed at infringing on the right of organization in the sphere of employment. So the protection has to be effective against any act whose purpose is to make the employment of a worker conditional on his abstention from the membership of a trade union, or against any act prejudicial to a worker on account of his membership in a trade union. The signatories to the convention bound themselves also to promote the system of collective bargaining for the regulation of the conditions of employment.

Another significant convention relating to the protection of human rights is the one signed under the auspices of UNESCO in Paris, on the 14th December 1960, against *Discrimination in Education*.

According to Article 1 of the Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) of depriving any person or group of persons of access to education of any type or level;

(b) of limiting any person or group of persons to education of an inferior standard.

The States Parties to the convention in particular undertake:

(a) to abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

(b) to ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(c) . . . not to allow any differences of treatment . . . except on the basis of merit or need in the matter of school fees and the grant of scholarships or other forms of assistance . . . (Article 3).

The convention binds the signatories to the formulation, development and application of an educational policy which by methods appropriate to national usage promotes equality of opportunity and treatment as regards participation in instruction (Article 4).

The convention contains an important statement on the content of instructional-educational work, according to which "Education shall be directed to the full

⁶⁸ The ratification by Hungary was deposited in Geneva on the 6th June, 1957.

⁶⁹ The ratification by Hungary was deposited in Geneva on the 6th June, 1957.

development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace" (Article 5).⁷⁰

4. CONCLUSIONS

After this survey of the measures for the protection of human rights, and a study of the trends and developments in this respect, our conclusions may be summed up as follows:

(1) After the First World War a process of democratization began in international law. This process was characterized by a trend to bring about cooperation between the peoples, to recognize the equality of peoples, and to safeguard the fundamental human rights. In this process the existence of the Soviet Union and her consistent policy of peace had had a decisive role.

(2) This process has become even more marked since the Second World War, mainly as a repercussion of this war. The horrors of the two world wars, the cruelties of Fascism made it clear that there was a close relationship between the safeguard of human rights, and international peace and security. No lasting peace could be brought about either within the particular states of the world, or on an international plane, unless human rights were protected by effective means.

(3) With the birth of the United Nations Organization the new concept of international law and the democratic construction given to it were translated into practical results. In response to decisive factors in the historical situation following upon the Second World War, — i.e. the advance of the progressive forces, the victory of the Soviet Union in the Great Patriotic War and her cooperation with the other powers in the struggle against Fascism, the recent conquests of Socialism — rules of international law were taken up in the United Nations Charter, which proved an effective instrument of progress, the maintenance and development of peaceful relations among the nations, the promotion of the respect for human rights. The provisions incorporated in the United Nations Charter acted as an incentive to the creation of international conventions purposing the protection of human rights. This process manifested itself in the sphere of international treaty so that in recently signed international conventions a growing number of provisions aiming at the protection of human rights have been incorporated.

(4) When now the process of a democratization of international law, the development of international treaty law, and within it the recent phenomenon of an increase of the number of international conventions aiming at the protection of human rights is discussed, it should be pointed out that the manifestation of this new phenomenon is merely an indication of *the tendency* to developed and expand the law of international conventions. The assertion of this tendency does not of

⁷⁰ Certain provisions on the protection of human rights were included in international conventions on the safeguard of the interests of war victims signed in Geneva, on the 12th August, 1949 (Decree-Law No. 12 of 1954).

course mean as if, for fleeting moments, opposite tendencies failed to emerge. *The attitude of the individual states to the general tendency of the development of international law* (which manifests itself in the growing number of international conventions purposing the safeguard of human rights) *is never accidental, because in this respect the political and economic system of the states concerned constitute the decisive factors.* In other words: the undertakings of a particular state under international law are always characteristic of the political, social, and economic system of the state in question.

Certain capitalist states, when it became apparent that on the strength of international rules of law relating to human rights the problem might arise of their application in the home country, or in territories administered by them — in first order in colonies —, took recourse to methods which in combination resulted in a restriction of the contents and scope of these undertakings, or even barred the introduction of rules of international law of this type.

Which were in fact these methods?

In many instances there were trends to discard international conventions which might impose actual obligations on the signatories to bring certain problems under international regulation, and to replace them by mere *recommendations* meaning no international commitments whatever. This trend presented itself in a pronounced form within the International Labour Organization, where in many important matters recommendations were accepted instead of international conventions.

Other states *have not become signatories* to international conventions serving the safeguard of human rights. Since in order to put into operation an international convention the accession of a definite number of states (20, 6, 2, etc.) is required, a failure to sign a convention may prevent it from becoming operative, or may defer its date of validity.

For example, the United States of America have so far failed to ratify the convention on the prevention and punishment of the crime of genocide, or the convention on the political rights of women.

The international convention on the recovery of maintenance abroad has lost much of its practical value, because exactly those states have refused to sign it, in first order the countries on the American Continent and Australia, which receive immigrants in the largest numbers, and where consequently the majority of cases occur in which cooperation would be essential. The convention on equal pay for equal work, i.e. the one placing women on an equal footing with men in labour contracts, was signed only by 43 states up to the 1st January 1963, and the convention abolishing discrimination in employment or occupation only by 38 states. It is rather characteristic that the latter convention was signed by the socialist countries, and a number of countries recently emerging from the colonial status. On the other hand it has not been signed by the United States of America, and by the European capitalist countries, except five.

As regards the restriction of the territorial scope of the conventions, tendencies manifest themselves primarily on the part of colonizing countries, to limit conventions which purpose the safeguard of human rights, to the home country.

So on the motion of the delegation of the United Kingdom the following provision has been taken up in the convention of the prevention and prosecution of genocide:

"Each Contracting Party may by way of a notification forwarded to the Secretary General of the United Nations Organization at any time extend the application of the present convention to all or any of the territories, the foreign relations whereof are administered by the contracting party.⁷¹ Owing to the incorporation of the so-called "colonial clause" in the convention, this instrument, so important for the safeguard of human rights, may therefore remain inoperative *ipso facto* in territories whose home countries have acceded to the convention.

When now the attitude of the socialist countries to international conventions on human rights is scrutinized, the following conclusions appear to be justified:

The socialist countries were in general among the first to participate in every international convention which in reality served the protection of human rights.

In many cases it was the signature of a convention by the socialist states that helped it to become operative. So the USSR first acceded on the 12th April 1957 to the convention on the prohibition of slavery signed in Geneva on the 7th September 1956; thus on the 30th April 1957, when a second state signed it, the convention became operative.

The socialist countries promoted the signature of conventions purposing the protection of human rights not only by becoming signatories to them, but also by making efforts to take up truly progressive provisions in them. Here mention may be made of the endeavours of the Soviet Union to have the colonial clause suppressed in the draft convention on human rights. It was also the motion of a socialist state, the Ukraine, that in the last paragraph of Article 23 of the convention on the suppression of traffic in persons and of exploitation of prostitution signed in New York, on the 21st March 1950, the following provision was taken up:

"For the purposes of the present Convention the term 'state' shall mean all colonies and trust territories, further all other territories of the states signing, ratifying, or acceding to the present Convention which in their international relations are represented by that state."⁷²

The significance of the article is that it strengthens the efficiency of the convention in question, as its validity *ipso facto* extends to all territories in a state of dependence on a signatory.

The socialist countries in many instances expressed their disapproval of certain retrograde provisions taken up in international conventions in the form of reservations.

So the Hungarian People's Republic made the following reservations to Article IX of the convention on the prevention and prosecution of genocide decreeing the compulsory jurisdiction of the International Tribunal, and to Article XII, i.e. the "colonial clause" of the convention:

⁷¹ UN. Doc. A/C. 6/236. (Quotation translated from French.)

⁷² UN. Doc. A/C. 3/L.10. (Quotation translated from French.)

"The Hungarian People's Republic makes reservations against the provisions included in Article IX of the Convention vesting extensive jurisdiction in the International Tribunal of the Hague, further against the provisions included in Article XII of the Convention which do not define the obligations of states which administer colonies, in respect of acts qualifying as exploitation and genocide committed in the colonies."^{72/a}

When now among the socialist states the most important undertakings of the Hungarian People's Republic under international law are analysed, the following may be pointed out:

From the whole political, social, and economic system of the Hungarian People's Republic there follows the far-reaching respect for, and the constitutional protection of, the civic rights whose concept — on an international plane — correspond to the term "human rights".

In international relations Hungary undertook international obligations in agreement with her internal governmental system in respect of the safeguard and protection of human rights.

Already some of the provisions of the Armistice Agreement⁷³ contain provisions for the safeguard of human rights.⁷⁴

According to Clause 1, Article 75 of the Peace Treaty signed in Paris on the 10th February 1947:⁷⁵

"Hungary shall take all measures necessary to secure to all persons under Hungarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expressions, press and publication, religious worship, political opinion and of public meeting."

Clause 2 of the same article reads:

"Hungary further undertakes that the laws in force in Hungary shall not, either in their content or in their application, discriminate or entail any discrimination between persons of Hungarian nationality on the ground of their race, sex, language or religion, whether in reference to their persons, prosperity, business, professional or financial interests, status, political or civil rights or any other matter."

In Article 3 of the Peace Treaty Hungary undertook "to set free, irrespective of citizenship and nationality all persons held in confinement on account of their activities in favour of, or because of their sympathies with, the United Nations or because of their social origin, and to repeal discriminatory legislation and restrictions imposed thereunder, shall complete these measures and shall in the future not take any measures or enact any laws which would be incompatible with the purposes set forth in this article."

^{72/a} Quotation translated from Hungarian.

⁷³ Act V : 1945.

⁷⁴ Articles 5 and 15.

⁷⁵ Act XVIII : 1947.

Article 4 of the Peace Treaty reads:

"Hungary, which in accordance with the Armistice Agreement has taken measures for dissolving all organizations of a Fascist type on Hungarian territory, whether political, military or paramilitary, as well as other organizations conducting propaganda, including revisionist propaganda, hostile to the United Nations, shall not permit in the future the existence and activities of organizations of that nature which have as their aim denial to the people of their democratic rights."

Without entering into a detailed analysis of the provisions of the Peace Treaty, or the internal legislation of Hungary for putting into effect the international conventions ratified by her, the statement may be ventured that Hungary has met all her commitments under international law for the safeguard of human rights.

Of the recent conventions aiming at the safeguard of human rights Hungary has signed all those which provide for an effective protection of human rights. First of all Hungary has ratified the *United Nations Charter*.⁷⁶

Hungary not only has become signatory to conventions related to the safeguard of human rights born under the auspices of UNO, but has signed a number of *bilateral conventions* with the socialist states. So the enforcement of the right to education is served by conventions on cultural cooperation,⁷⁷ the right to social services by social-political conventions,⁷⁸ the right to equality before the law by conventions on judicial assistance in matters civil and criminal.⁷⁹

The Hungarian People's Republic in whose political, social, and economic system a far-reaching respect for the civic rights is inherent, has undertaken the obligations under international law — as regards the safeguard and protection of human rights — which correspond to her internal governmental system.

5. As final conclusion it may be stated that the process of democratization of international law, which manifests itself, among others, in tendencies directed to the protection of human rights under international law, has led to the recognition that today international law is a significant means of the development of peaceful relations among the states, and of the maintenance of international peace and security. Its progress and development, therefore, should not be indifferent to any state which is intent to meet its obligations under the United Nations Charter in good faith.

⁷⁶ Act I : 1956.

⁷⁷ A convention of this type is that signed on cultural and scientific cooperation between Hungary and the German Democratic Republic in Budapest, on the 19th December, 1959 (Decree-Law No. 23 of 1960).

⁷⁸ A convention of this type is that signed on cooperation in social policy between Hungary and Czechoslovakia in Budapest, on the 30th January, 1959 (Decree-Law No. 41).

⁷⁹ A convention of this type is that signed on judicial assistance in matters of civil, family, and criminal law, between Hungary and Rumania, in Bucharest, on the 7th October, 1958 (Decree-Law No. 19, of 1959).

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